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S. 1818—TO ESTABLISH AN INDEPENDENT INSPECTOR GENERAL

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INTELLIGENCE

OF THE

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 1818

THE NATIONAL SECURITY REFORM ACT OF 1987 TO ESTABLISH AN INDEPENDENT INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY

TUESDAY, MARCH 1, 1988

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S. 1818—TO ESTABLISH AN INDEPENDENT INSPECTOR GENERAL FOR THE CENTRAL INTELLIGENCE AGENCY

TUESDAY, MARCH 1, 1988

U.S. SENATE,
SELECT COMMITTEE ON INTELLIGENCE,
Washington, DC.

The Select Committee met, pursuant to notice, at 2:25 o'clock p.m., in Room SD-562, Dirksen Senate Office Building, the Honorable David Boren, Chairman of the Committee, presiding.

Present: Senators Boren, Bradley, Specter and Warner.

Staff present: Sven Holmes, Staff Director and General Counsel; James Dykstra, Minority Staff Director; and Kathleen McGhee, Chief Clerk.

PROCEEDINGS

Chairman BOREN. We'll commence at this point. I apologize but some other conflicting committee meetings have delayed the beginning of these hearings. I know that there are some other Members who hope to join us.

On behalf of the Senate Select Committee on Intelligence, I want to extend a welcome to our witnesses today as the committee gives consideration to Senate Bill 1818, a bill sponsored by our colleague, Senator Specter, to establish an independent Inspector General for the Central Intelligence Agency.

The issue of an independent Inspector General for the CIA was first raised in 1976 by the predecessor of the Select Committee on Intelligence, the Church Committee. In its ensuing report, the committee stopped short of recommending an independent Inspector General because of concern that Presidential apppointment might give a political coloration to the position and thus diminish the effectiveness of the office. But since that time, however, the Congress has had the experience of an independent Inspector General Act in 1978 against which to evaluate this issue.

In addition, the Select Committee on the Iran-Contra matter found that the CIA's Office of Inspector General lacked, and I quote now the final report of that committee, "the manpower, resources, and tenacity to acquire key facts uncovered by the committee and the Tower Board." As a result, the majority report of the committee—and it was as you recall a split report, both majority and minority—the majority report of the committee recommended that a system be developed so that the CIA has an independent

statutory Inspector General who is confirmed by the Senate. This essentially is what is provided in Senator Specter's bill, S. 1818.

Since that time, the Director of Central Intelligence, Mr. Webster, has testified in opposition of this bill. In January of this year, he also advised the committee that he had made sweeping changes in the CIA's Inspector General Office to correct the deficiencies noted by the Iran-Contra Committee. So today, we will address these and other issues related to this legislation.

Prior to testimony by Judge Webster, we are very pleased to welcome and to have with us today the Comptroller General of the United States, Mr. Charles Bowsher, whose Government Accounting Office has been inspecting the independent Inspector Generals for a period of approximately 10 years I believe.

We are equally pleased to have two independent Inspectors General created by the Act, Mrs. June Gibbs Brown, the Inspector General for the Defense Department and Mr. Sherman Funk, the Inspector General for the State Department. We appreciate both of you being with us today to share your experience with us.

Following remarks and questions to Mr. Bowsher, Ms. Brown and Mr. Funk in that order, Judge Webster will join the hearing and make his opening comments and we'll have questions directed to him.

I'd like to ask at this point if Senator Specter might have any opening comments that he would like to make before we hear from the Comptroller General.

Senator SPECTER. Thank you very much, Mr. Chairman.

I would ask that my prepared statement appear in the record.

Chairman BOREN. Without objection, so ordered.

[Prepared statement of Senator Specter follows:]

PREPARED STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

I WANT TO THANK THE CHAIRMAN FOR SCHEDULING THIS HEARING TODAY. AS YOU INDICATED, THE IDEA OF AN INDEPENDENT IG FOR CIA WAS CONSIDERED IN 1976 AND WAS RECOMMENDED LAST YEAR BY THE SELECT COMMITTEES INVESTIGATING THE IRAN-CONTRA AFFAIR. THIS COMMITTEE MUST ASK TODAY WHY THE LESSONS OF 1976 WERE NOT LEARNED IN 1986 AND 1987? IN 1976, THE CHURCH COMMITTEE POINTED OUT THE SHORTCOMINGS OF THE CIA'S OFFICE OF INSPECTOR GENERAL. IT FOUND THAT OFFICE HAD PROBLEMS ACCESSING INFORMATION, IT HAD PROBLEMS OF EMPHASIS, IT HAD PROBLEMS DISCOVERING POTENTIAL PROBLEM AREAS, IT LACKED A SUFFICIENT NUMBER OF QUALITY PERSONNEL AND IT LACKED THE AUTHORITY TO PROVIDE ASSISTANCE TO THE CONGRESSIONAL OVERSIGHT COMMITTEES. THAT LITANY HAS A FAMILIAR RING TO IT IN LIGHT OF WHAT WE HAVE SINCE LEARNED OF THE CIA'S INSPECTOR GENERAL ROLE IN THE COURSE OF THE IRAN-CONTRA AFFAIR.

IN 1976, THE CIA INDICATED THAT IT HAD CORRECTED SHORTCOMINGS IN ITS IG OFFICE. THE INSPECTOR GENERAL WOULD REPORT DIRECTLY TO THE DIRECTOR OF CENTRAL INTELLIGENCE, THE IG WOULD HOLD RANK EQUIVALENT TO THAT OF DEPUTY DIRECTORS AND FINALLY, THE OFFICE WOULD HAVE A WIDE RANGE OF RESPONSIBILITIES DESIGNED TO IMPROVE THE PERFORMANCE OF THE CIA.

IN JANUARY, JUDGE WEBSTER WROTE TO EACH MEMBER OF THIS

COMMITTEE TO PROVIDE US DETAILS OF HOW HE HAS OVERHAULED AND UPGRADED CIA'S OFFICE OF INSPECTOR GENERAL. SOME OF IT SOUNDED FAMILIAR - AND I QUOTE - "HE (THE IG) WILL NOW REPORT DIRECTLY TO ME," "HE HOLDS THE RANK OF DEPUTY DIRECTOR," "I SEE THE INSPECTOR GENERAL IN A POSITIVE, CONSTRUCTIVE SENSE DIRECTLY INVOLVED IN IMPROVING OVERALL AGENCY MANAGEMENT." WHAT I DID NOT SEE IN THAT LETTER WAS AN ASSERTION OF THE INDEPENDENCE OF THE IG, NOR WHETHER THE COMMITTEES WOULD BE ASSISTED IN THEIR OVERSIGHT RESPONSIBILITIES BY THE PERIODIC REPORTS OF THE INSPECTOR GENERAL. ON THE CONTRARY, ONE CIA DOCUMENT RECEIVED IN DECEMBER INDICATED THAT THE INTELLIGENCE COMMITTEES NORMALLY WILL NOT RECEIVE THESE REPORTS UNLESS THEY SO REQUEST THEM IN WRITING. TODAY, I SHALL ASK JUDGE WEBSTER "WHAT HAS CHANGED" AND "WHAT ASSURANCES WILL YOU GIVE THIS COMMITTEE THAT TEN YEARS FROM NOW WE WON'T BE HAVING THIS SAME HEARING."

IN HIS APPEARANCE BEFORE THIS COMMITTEE ON DECEMBER 16TH, JUDGE WEBSTER ALSO INDICATED THAT HE WOULD USE THE INSPECTIONS MODEL HE CREATED AT THE FBI TO UPGRADE CIA'S IG OFFICE. IN LIGHT OF WHAT WE ARE LEARNING ABOUT THAT MODEL, I AM LESS THAN CONVINCED THAT THIS WOULD REPRESENT A STEP FORWARD.

FINALLY, MR CHAIRMAN, I ALSO WANT TO EXPRESS MY GRATITUDE TO MR BOWSHER, MS BROWN AND MR FUNK FOR APPEARING BEFORE US TODAY. THEIR TESTIMONY ON HOW THE INDEPENDENT IG SYSTEM IS FUNCTIONING SHOULD SERVE AS A VALUABLE BENCHMARK IN ASSESSING THE LEGISLATION BEFORE US TODAY. THANK YOU.

Senator SPECTER. Thank you, Mr. Chairman, for scheduling these hearings so promptly. As you are aware, I believe the issue of an independent Inspector General is one which we ought to revisit and ought to consider.

This has been an issue which has been pending since 1976 when the Church Committee came forward with its comments about an independent Inspector General. There has been substantial experience in the interim with some 19 independent Inspectors General which we will hear about today from the Comptroller General including the independent Inspectors General in the Department of State and the Department of Defense, both of which certainly are agencies dealing with sensitive classified information.

We have seen major problem areas. We have heard Judge Webster comment about the analogy between the CIA and the FBI, neither of which has an independent Inspector General. And just last week, we had extensive testimony on the CISPES matter, which perhaps demonstrates the need for an independent Inspector General at the Federal Bureau of Investigation. There is legislation now pending for consideration by the Congress on that subject.

The issue of congressional oversight is one of great importance and it is obvious that the Congress cannot really get into the details of all of the agencies of the United States Government. It is just not possible to do so. The investigation conducted by the Select Committees on the Iran-Contra affair demonstrated, at least to the satisfaction of this Senator, that there must be material improvement within the CIA on its own internal investigative procedure. That is why I have pressed for this committee to legislate for an independent Inspector General.

And I think the witnesses today are in a good position to share with us their knowledge and insights and we look forward to their testimony.

Thank you very much.

Chairman BOREN. Thank you very much.

Let me mention that it seems like it's a day for problems. I've just been informed there is a vote on the floor at this moment on a motion to proceed to the polygraph bill. Let me ask Senator Specter, we can take turns. I can go right over and vote and come back or we can have a brief 5 minute recess. Both of us probably want to hear all the testimony. Which would you prefer?

Senator SPECTER. Well in light of the timing on votes, I think we would be best advised to go together and return.

Chairman BOREN. All right. We'll just take a very brief recess and we'll be right back then to hear from the Comptroller General.

Stand in recess.

[A brief recess was taken from 2:31 p.m. to 2:48 p.m.]

Chairman BOREN. We'll resume at this point. We've been joined by Senator Warner of Virginia and I want to give our colleague, Senator Warner, a chance to make a brief opening comment before we turn to Mr. Bowsher's testimony.

Senator WARNER. Thank you, Mr. Chairman.

I'm delighted that we've undertaken this important analysis of this subject. And I welcome my old colleague from the Department of the Navy. We used to call him Secretary Bowsher. I think that

was the best job either of us have ever had but I look forward to your testimony.

Chairman BOREN. Thank you, Senator Warner.

Mr. Bowsher, we'll receive your opening remarks at this time. We appreciate your being with us.

STATEMENT OF CHARLES A. BOWSHER, COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE

Mr. BOWSHER. Thank you very much, Mr. Chairman and Members of the Committee.

For the sake of time, I'd like to just summarize my statement here and if you would I'd like to have it included in the record.

You asked us three questions basically. To comment on the effectiveness of the Inspector General Act of 1978 and as you said, Mr. Chairman, in your opening remarks, we have studied the various Inspector General operations at the various cabinet level and other agencies. There are now 19 and they also had about 10 years experience. And in GAO's doing the review, we have come to the conclusion that the Act has been quite effective and that the savings, the number of cases brought and everything like that are up quite dramatically from prior to the Act. So we think the Act has been successful and have recommended it to the Congress on several occasions now for other departments.

The second question you asked is concerning the ability of the statutory Inspectors General to protect classified information. And, of course, that's very important in this situation. We have not found any evidence that they did not have the ability to protect classified information. And ourselves, the GAO, we handle a lot of it and over the years, we've been able to set up the same safeguards as the agencies themselves. And so I think the ability to protect that information has been demonstrated and demonstrated quite consistently over the years.

The third question you asked was to provide our views on the value of a statutory Inspector General for the CIA. I think the basic added things you get from a statutory Inspector General are two or three items. Namely the greater independence, the permanence of the function in the agency, and I think Congress has greater access to the Inspector General and greater accountability of the work that the Inspector General is doing. And I think those are the three big advantages.

So that would conclude my comments, Mr. Chairman.

Chairman BOREN. Thank you very much.

[The prepared statement of Mr. Bowsher follows:]

PREPARED STATEMENT OF CHARLES A. BOWSHER, COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to appear here today to discuss section 4 of Senate bill 1818 which would establish an Office of Inspector General at the Central Intelligence Agency (CIA). Specifically, we would like to (1) comment on the effectiveness of the Inspector General Act of 1978, as amended, in uncovering abuses and improving agency operations, (2) discuss the ability of statutory inspectors general (IGs) to protect classified information, and (3) provide our views on the value of a statutory inspector general for the CIA.

EFFECTIVENESS OF THE INSPECTOR GENERAL ACT OF 1978

We believe the Inspector General Act of 1978 has played a significant role in strengthening federal internal audit and investigative activities and improving the operations of the federal government. Under the IG act of 1978 and other legislation, statutory inspectors general have been established in 19 departments and agencies. The creation of these statutory IGs has been a bipartisan effort that has improved the effectiveness of the federal government.

The establishment of statutory IGs was designed to combat fraud, waste, and abuse and to correct numerous organizational and procedural deficiencies in the federal audit and

investigative community. These deficiencies included

-- the lack of effective central leadership among multiple audit and investigative units operating within an agency,

-- the lack of independence due to auditors and investigators reporting to officials who were responsible for the functions under review and investigators being restricted from looking into certain areas of suspected irregularities,

-- audit recommendations frequently being ignored by agency officials,

-- audit and investigative units being severely limited due to inadequate resources, and

-- the lack of procedures to ensure that the agency head and the Congress were informed of serious problems discovered in the agency.

GAO strongly supported the Inspector General Act of 1978 and other legislation that created the statutory inspectors general. We supported such legislation because it would correct many of the deficiencies in the audit and investigative communities and would help ensure that high-level attention is given to promoting

accountability, adequate internal controls, economy, efficiency, and effectiveness in federal programs and operations. We also believed such legislation would help ensure that the Congress and agency heads would receive independent assessments of federal programs and operations for which they are accountable or have oversight responsibility.

GAO reviews of IG activities over the past several years indicate that the establishment of statutory IGs has been a key factor in strengthening federal internal audit and investigative activities and improving operations within the federal government. The statutory IGs and the President's Council on Integrity and Efficiency, whose membership includes the statutory IGs, have reported to the Congress that they have had substantial success in helping bring about improvements in the federal government.

The IGs have been responsible for uncovering fraud, waste, and abuse in their agencies, and their efforts have resulted in savings involving billions of dollars. The President's Council on Integrity and Efficiency has calculated aggregate statistics for data reported by the IGs for fiscal years 1982 through 1986. These statistics show that during that period:

-- successful prosecutions of wrongdoers increased from 2,099 cases to 4,094;

-- investigative recoveries rose from $45.3 million to $191.8 million;

-- sanctions against contractors or offices doing business with the federal government increased from 502 sanctions to 2,047; and

-- annual savings resulting from recoveries and restitutions arising from IG findings and avoidance of incurring unnecessary expenditures rose from $11.5 billion to $20 billion.

INSPECTOR GENERAL ABILITY TO PROTECT CLASSIFIED INFORMATION

The questions of whether IGs should be involved in areas dealing with classified or other types of sensitive information and whether they have the abilities to do so are not new. These issues were addressed when the Congress passed legislation establishing IGs at the Departments of Defense (DOD) and State and when the Senate passed S. 908, the Inspector General Act Amendments of 1987, which, among other things, would establish IGs at the Department of the Treasury and at the Internal Revenue Service.

Our work with the IGs has not disclosed, nor are we aware of, any instances where there has been a weakening in security or confidentiality in agencies that have statutory IGs. This includes those agencies, such as the Departments of Defense and State, where security is a paramount consideration. We are not aware of any reason why a CIA IG could not safeguard information regarding national security matters.

The Senate Committee on Governmental Affairs also studied this issue when it was considering the Inspector General Act Amendments of 1987. In its August 7, 1987, report on this bill, the Committee determined that "there is no reason to believe an IG is less trustworthy than other agency officials in handling sensitive information."

Senate bill 1818 provides the Director of the CIA a mechanism to prohibit its IG from looking into matters when such reviews would pose a threat to national security. Specifically, section 4(a)(3) allows the Director of the CIA to prohibit the IG from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena dealing with ongoing operations if the Director determines that such a prohibition is necessary to protect national security. However, if the Director exercises this power, he must submit the reasons for doing so within 7 days to this Committee and to the Permanent Select Committee on Intelligence of the House of Representatives. This

provision is similar to a special provision in section 8 of the IG act which allows the Secretary of Defense to prohibit certain IG audits and investigations to preserve national security interests. The act also requires the DOD IG to report any such action to the appropriate congressional committees, and the Secretary must submit a statement of the reason to the same committees. The DOD IG advised us that this provision has never been used.

Similar to the DOD provision in section 8 of the IG act, S. 908, the Inspectors General Amendments of 1987, authorizes the Secretary of the Treasury and the Commissioner of Internal Revenue to prohibit IG audits and investigations which require access to certain sensitive information, when necessary to preserve the confidentiality of such information. Again, as with the DOD provision, the prohibition of an IG audit or investigation would be reported to appropriate congressional committees. This bill passed the Senate on February 2, 1988, and is being referred to the House for action.

VALUE OF A STATUTORY INSPECTOR GENERAL AT THE CIA

We have supported the creation of all the existing IGs and have testified that IGs should be created in the Departments of Justice and Treasury. We have not reviewed the nonstatutory IG function at the CIA. However, we believe that a statutory IG

would be as appropriate and effective for the CIA as it has been for the other agencies with existing statutory IGs.

TECHNICAL CONSIDERATIONS

I would like to address some technical considerations regarding this issue. GAO has consistently supported creating new IGs by amending the IG act of 1978, because the act contains uniform requirements regarding such things as the qualifications and responsibilities of IGs and the auditing standards they are to follow. We believe that using the 1978 act as an umbrella when new IGs are created, and modifying it as necessary for special considerations, as was done in creating the DOD IG, ensures consistency in the organization and operation of the various IG offices.

If the Committee does not wish to include a CIA IG under the 1978 act, we suggest that the Committee consider the written comments on section 4 that we provided on December 7, 1987. These comments included a comparison of the provisions of section 4 with those of the Inspector General Act of 1978. The comparison identified a number of differences for the Committee's consideration in drafting the final legislation. We understand the Committee is considering making some changes to the bill based on our comments. These include specifying the qualifications of the CIA IG, giving the IG access to records,

and ensuring that the IG has direct access to the head of the agency. We believe that these changes will help strengthen section 4 of this bill. Our staff is available to discuss these technical matters.

This concludes my statement. We would be pleased to respond to any questions you may have.

Chairman BOREN. Ms. Brown?

STATEMENT OF JUNE GIBBS BROWN, INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Ms. BROWN. Mr. Chairman, Members of the Committee.

I'll also summarize my statement.

In your letter you asked that I discuss the operational abilities and constraints that we've had in addressing classified programs. The Inspector General Act of 1978 as amended gave special consideration to the unique problems in auditing and investigating classified programs.

We found these provisions suit our needs quite well. They provide good mechanisms for our access determinations that are made by the highest levels in the department. They provide for a requirement for immediate congressional notification when the Secretary denies access or puts any unnecessary limitations upon us. We've never had to advise the Congress of any limitations. Although there have been some delays and problems occasionally, we've never had occasion where we weren't able to get the information necessary.

My office interfaces with classified programs in three ways. We audit the programs, we inspect them, and we investigate them. We also provide oversight reviews of the Defense Contract Audit Agency and the military services when they are involved in audits of classified contracts or conduct criminal investigations relating to intelligence or special access programs.

Now in audit, for years we've been involved in auditing classified programs. And the audit techniques used are the same as those that are used in any of our other audits in the military departments or agencies. Certain agencies are given continuous audit coverage. And they include the Defense Intelligence Agency, the Defense Nuclear Agency, and the National Security Agency.

In the military departments, we also audit tactical intelligence, intelligence training and combat readiness. And we've also audited defense reconnaissance programs which interface with the national programs of the Director of the Central Intelligence Agency.

In our audit policy and oversight office reviews we have audited the—or we have looked at the DCAA field detachment. And this is a special group that has been established to audit certain classified contracts. The work of that detachment, as in our office, is the same as that in the rest of DCAA except that they have special security measures used to protect the classified data.

Originally the detachment was established to review only compartmentalized contracts. However, during the past several years, special access programs were established for major weapon systems and audit cognizance was given to this same group to audit those programs.

The internal audit agency of the military departments also conduct audits of special access and classified programs and there's a DOD directive that provides that these auditors shall have full and unrestricted access to all the records, facilities and personnel for the accomplishment of their announced objectives of the audits. Only the Secretary of the military department can deny access.

Much like the law provides us, if the Secretary of Defense denies access to the Inspector General, we would notify Congress. If one of the Secretaries of the military department denies access, then the Inspector General is notified within 15 days of that denial.

In March of 1986, the Deputy Inspector General entered into a Memorandum of Understanding with the Director of the Joint Staff Office of the Joint Chiefs of Staff. And they created this Memorandum of Understanding for internal auditors of the military departments. And that gives the guidance as to how this operation will proceed.

We also do inspections in these agencies such as Defense Nuclear, Defense Communication Agency and the Defense Mapping Agency.

In investigations, the Defense Criminal Investigative Service of my office has conducted investigations regarding any criminal activities such as cost mischarging, false test certification, and conflicts of interest in classified programs. Those in the military departments have also done so.

And, for example, there have been some successful prosecutions. The Army Criminal Investigative Command successfully completed a corruption related investigation in classified activities of an Army special operation program that resulted in convictions before court martials.

The Naval Investigative Service has also achieved such results and a special operations group investigation obtained convictions in the U.S. District Court and court martials for procurement fraud and corruption offenses.

Access has never been a problem for the investigators. Having established positions in the functional areas of the OIG2 established these unique requirements that exist in the various intelligence programs. We have auditing, inspecting and investigating people that are specially trained to handle these special requirements. I believe it has been satisfactory both to us, the program officials, and to the department.

The constraints that the Act provides seem reasonable to me. The department has taken the view that only the most time sensitive information would need to be limited. As, for example, if by chance we sought information relating to the Grenada invasion on the eve of that event.

In summary, I believe we are able to address the issues in classified areas as we are in non-classified segments of the department's operations and the IG Act serves our needs to protect the information.

You also requested that I comment on the impact of the statutory IG in maintaining security of classified information and on the Department's ability to carry out its mission effectively. As part of the DOD, we are aware of the necessity of protecting classified information. Our auditors, investigators, inspectors all have the appropriate clearance. We have a cadre of specially trained and indoctrinated people for the most sensitive programs. And we've also created a special unit within the Defense Criminal Investigative Service to monitor and assist in our investigations of classified programs.

To further enhance our ability to pursue these programs, we've entered into an agreement with the Department of Justice and they have established the Defense Procurement Fraud Unit as the contact point for all criminal investigation referrals.

There's a criminal investigation policy memorandum entitled "Criminal Referrals Involving Fraud and General Crimes in Classsified or Sensitive Programs." And that was from 1986. It provides guidance for such referrals and there are certain individuals that are identified in the fraud unit with appropriate security clearance and eligibility for access that will be available whenever needed.

I believe that our work has improved the department's mission performance. And we use the same standards of integrity, efficiency, and accountability that are applied elsewhere in the department.

We've sometimes felt that it was unduly time consuming to obtain access to classified information but we've always obtained that access when needed. The Act's provisions have provided us with a good balance. We can obtain access to the information we need, the Secretary can prevent us from having access when he determines the national security is concerned, and the Congress has oversight to ensure that the national security is not used as an excuse to cover up any mismanagement or illegal activities.

The third and final thing you've asked us to describe was the relationship between my office and the rest of the department. I have direct access to the Secretary and the Deputy Secretary of Defense as well as all the officials subordinate to him, both at the defense level and in the military departments. The budget for the OIG is included as part of the appropriation for operations and maintenance defense agency budget.

I believe that both my predecessor, the Deputy Inspector General and myself have had the same experience of complete support from both Secretary Weinberger and Secretary Carlucci. I'll be happy to answer any further questions and will submit my full statement for the record.

Chairman BOREN. Thank you very much. It will be received for the record.

[The prepared statement of Ms. Brown follows:]

PREPARED STATEMENT OF JUNE GIBBS BROWN, INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

Mr. Chairman and members of the Committee, it is a pleasure to be here today to testify regarding Inspector General, Department of Defense (IG, DoD) coverage of classified programs.

In your letter of invitation, you asked that I discuss our operational abilities and constraints in addressing classified programs.

INSPECTOR GENERAL ACT OF 1978

When the Inspector General Act of 1978 was amended in 1982 to establish an Office of Inspector General (OIG) for the Defense Department, special consideration was given to classified programs and operations. Unique provisions were enacted with respect to DoD which were intended to allow only the Secretary of Defense and no one else to control IG access to the most sensitive classified programs. The Secretary and the IG must provide the Congress with information concerning any instance where the Secretary acted to restrict IG access to classified information. A copy of this portion of the IG Act is appended to my statement.

We have found these provisions serve our needs. They provide good mechanisms for our access determinations to be made at the highest levels of the Department. The requirement for immediate Congressional notification when the Secretary denies access to us precludes unnecessary limitations by the Department. To date, we have never had to advise the Congress that we were denied access. There have been instances where there have been delays and problems, but these have always been resolved without compromising our independence and access and the Department's legitimate security needs.

INSPECTOR GENERAL REVIEW OF CLASSIFIED PROGRAMS

My office interfaces with classified programs in four ways. We audit the programs; inspect organizations and functions involved in classified

programs; perform oversight reviews of the Defense Contract Audit Agency (DCAA) and the Military Service internal audit agencies, all of which audit classified contracts; and conduct criminal investigations relating to intelligence or special access programs.

Audits

For years, the IG, DoD has been involved in auditing classified programs of the Department of Defense. The audit techniques used for audits of these programs are the same as those used for other audits. Such audits have included programs of the Military Departments and the Defense agencies. Some of the agencies that are given continuous audit coverage include the Defense Intelligence Agency, the Defense Nuclear Agency, and the National Security Agency. In the Military Departments, we audit such areas as tactical intelligence, intelligence training and combat readiness. We also have audited defense reconnaissance programs which interface with national programs of the Director of Central Intelligence.

Our Audit Policy and Oversight Office reviews the DCAA Field Detachment which was established to audit certain classified contracts. The work and responsibilities of the Detachment are the same as that of the rest of DCAA except that special security measures are used to protect the classified data. Originally, the Detachment was established to review certain compartmented contracts; however, during the past several years special access programs have been established for major weapon systems, and audit cognizance was given to the Detachment because of the security requirements. Our oversight reviews of DCAA and the Field Detachment are the same. We review for compliance with prescribed auditing standards, policies and procedures.

The internal audit agencies of the Military Departments also conduct audits of special access and classified programs. DoD Directive 7600.2 provides that these auditors shall have full and unrestricted access to all records, facilities and personnel for the accomplishment of the announced objectives of their audits. Only the Secretary of the Military

Department may deny access to his or her auditors and only for the reasons under which the Secretary of Defense may deny access to the Inspector General, DoD. This Directive further provides that the Secretary of the Military Department will notify the Inspector General, DoD, within 15 working days of any denial actions.

Further, in March 1986, the Deputy Inspector General, DoD, entered into a memorandum of understanding with the Director, Joint Staff, Office of the Joint Chiefs of Staff, on access by DoD auditors to sensitive military plans and supporting documents. This MOU also applies to the internal auditors of the Military Departments.

Inspections

Our inspectors inspect organizations and functions that may be involved with classified and special access programs. Inspections are closely coordinated with program management personnel, who control program access, as well as with security personnel. Recent inspections involved classified activities within the Defense Nuclear Agency, the Defense Communications Agency and the Defense Mapping Agency.

Investigations

The investigative arm of my office, the Defense Criminal Investigative Service, has conducted investigations regarding criminal activities, such as cost mischarging, false test certifications and conflict of interest, in classified programs, as have the investigative organizations of the Military Departments. For example, the Army Criminal Investigation Command successfully completed a corruption related investigation in the classified activities of an Army special operations program which resulted in convictions before courts martial. The Naval Investigative Service has also achieved results in their investigation into activities of a special operations group, obtaining convictions in U.S. District Court and courts martial for procurement fraud and corruption offenses. Access has not been a serious problem for our investigators.

Having established positions in the functional areas of the OIG to handle the unique aspects of auditing, inspecting and investigating matters related to classified programs, we have been able to perform our responsibilities in a manner which I believe is satisfactory both to us and to program officials. The OIG personnel working in this area bring to their duties both the requisite functional expertise and an appreciation of how their work must be conducted, documented and safeguarded in the classified arena.

The constraints imposed by the IG Act are reasonable. The Department has not sought to unnecessarily invoke the Act's denial provisions. Indeed, it appears to me that the Department has taken a view that only the most time-sensitive information would need to be limited as, for example, if by chance we had sought information relating to the Grenada invasion on the eve of that event.

In summary, I believe we are as able to address issues in classified areas as we are in non-classified segments of the Department's operations. The IG Act serves our needs for access and the constraints it imposes have been reasonably interpreted by the Department.

You also requested that I comment on the impact of a statutory IG in maintaining the security of classified information and on the Department's ability to carry out its missions effectively.

INSPECTOR GENERAL IMPACT ON MISSION PERFORMANCE

Of course, people who do not want independent review of their classified programs are prone to instinctively raise the spectre of "security" as a reason to block OIG oversight or investigation. However, in reality, our work in this area to date has presented no additional security problems for the Department.

We are a part of the DoD, and as such, we are aware of the necessity to protect classified information. We have auditors, investigators, and inspectors with the appropriate security clearances. To preclude

problems, we have a cadre of specially trained and indoctrinated auditors for the most sensitive programs. We also created a special unit within the Defense Criminal Investigative Service to monitor and assist in our investigations of classified programs. To further improve our ability to pursue criminal violations in special programs, we have developed procedures with the Department of Justice wherein it has agreed to designate the Defense Procurement Fraud Unit as the focal point for all criminal investigative referrals involving classified programs. Criminal Investigations Policy Memorandum Number 9, entitled "Criminal Referrals Involving Fraud and General Crimes in Classified or Sensitive Programs," signed by the Deputy Inspector General on July 29, 1986, provides guidance on these referrals to the Military Departments. The memorandum specifies that such referrals shall be made directly to those individuals in the Fraud Unit who have the appropriate security clearances and eligibility for access. The referrals shall also be made without prior coordination or referral to local United States Attorneys. As you can see, we have made every effort to ensure that the security of these programs is not compromised.

I believe that our work involving classified programs has improved the Department's mission performance. We bring to the classified arena the same standards of integrity, efficiency and accountability that we apply elsewhere in the Department. Our investigations, audits and inspections provide senior officials with information they can use to improve the execution of these programs and our followup programs ensure that due consideration is given to our findings and recommendations.

Sometimes we have felt that it was unduly time consuming to obtain access to classified program information, but we have always obtained access to the information we required to complete our audits, investigations and inspections. The IG Act provisions have provided us with a good balance: we can obtain access to the information we need; the Secretary can prevent us from this access when he determines the national security is concerned, and the Congress has oversight to ensure

that the national security is not used as an excuse to cover up mismanagement or illegal activity.

Finally, you asked for a description of the relationship between my office and the rest of the Department.

INSPECTOR GENERAL RELATIONSHIP WITH DOD

I have direct access to the Secretary and Deputy Secretary of Defense as well as to all officials subordinate to them, both at the Defense level and in the Military Departments and Defense agencies. The budget for the OIG is included as part of the appropriation for Operations and Maintenance, Defense Agencies.

As I stated earlier, I believe that the OIG is part of the Department and that I work for the Secretary. But my obligation to him, and to the President, is to independently evaluate the programs and operations of the Department, to promote economy and efficiency, and to prevent and detect fraud, waste and mismanagement. Both Secretary Weinberger and Secretary Carlucci recognize the unique role that the IG performs and have provided the operational and personal support needed to make my office truly effective within the Department of Defense.

Mr. Chairman, that concludes my statement. I will be happy to answer any questions you might have.

Chairman BOREN. Mr. Funk.
Mr. FUNK. Thank you, sir.

STATEMENT OF SHERMAN M. FUNK, INSPECTOR GENERAL, DEPARTMENT OF STATE

Mr. FUNK. Thank you, Mr. Chairman. Senator Specter. Senator Warner.

I too will abbreviate my testimony in the interest of time. As the committee requested, my testimony will focus on how the statutory IG is working at the State Department and our ability to inspect intelligence activities. I hope that this experience will assist the committee in its consideration of S. 1818.

As IG at State, I operate with complete independence, reporting only to the Secretary and Deputy Secretary. I have total access to all department personnel regardless of grade or level. And to all department records regardless of classification.

To ensure that my office is kept fully informed of all management issues, I sit *ex officio* on the department's Management Council. And also on the committee which oversees the department's compliance with the Federal Manager's Financial Integrity Act.

As of last December, the President signed legislation which also gives me a second hat as the Inspector General of the Arms Control and Disarmament Agency. And that same Act directs me to conduct a review—a comprehensive review of physical, personnel, document and communications security at ACDA. I have an audit team working on that now and I will report the results to Congress when it is completed.

Our office in State has a heavy burden. We cover more than two hundred and fifty foreign posts, and all domestic offices of the State Department and of ACDA. Since we started, virtually from scratch—I've only been on board since last summer—one of my main jobs now is to make sure that I recruit the highest quality staff obtainable. And we're still short of our authorized strength, but we have a very wide ranging and very aggressive program.

Chairman BOREN. What is your authorized strength?
Mr. FUNK. 236, sir.
Chairman BOREN. What is it in Defense?
Ms. BROWN. The total number? We have almost 1500.
Chairman BOREN. 1500 in the Inspector General's Office?
Ms. BROWN. Yes.
Chairman BOREN. And 236 in State?
Mr. FUNK. 236.
Chairman BOREN. 236 is authorized.

Mr. FUNK. For example, the kind of work we are doing right now, this year so far we have already inspected the large U.S. Missions in the Philippines, Japan, West Germany, Spain, Portugal, and El Salvador. We are currently inspecting 18 posts in western and southern Africa, the Caribbean and Switzerland, as well as the Bureau of Intelligence and Research and the Office of Foreign Missions here in headquarters. We are also carrying out a special review of the department's crisis management capabilities. My audit office has major reviews underway in the areas of security, overseas construction, financial management, consular activity,

and by request of the Oversight Committee and the authorization bill, we're conducting a special review of the performance awards in the Senior Foreign Service. And our Office of Investigations currently has about 180 open cases.

You have expressed an interest in how my office reviews intelligence activities. In the course of each overseas inspection, and we do about 70 to 80 a year of these, the senior inspector who almost always is a former Ambassador, is tasked with personally assessing relations between the chief of mission and the intelligence components of the Embassy.

In addition, he reviews intelligence activities to determine—within the contraints of time and access—whether there are any apparent violations of law involved in intelligence programs in the country being inspected.

On the teams' return, the senior inspector advises me orally and in writing of any problem that he has observed while he was at post. I generally pass these comments on to the Bureau of Intelligence and Research. And in some cases, I discuss them personally with senior officials of the agencies, the intelligence agencies.

In addition, quarterly I report to the chairman of the President's Intelligence Oversight Board on these and other relevant findings which arise from our work. Once each year, a senior inspector reviews in depth all covert programs known to the department. This review is carried pursuant to Executive Order 12334 which charges the IG's and the General Counsels of the intelligence community to report to the Presiedent's Intelligence Oversight Board concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive Order of Presidential Directive.

Our review involves a very detailed reading of INR's files, interviews with senior offices in INR, the geographic bureaus, the Office of Legal Advisor and also of the intelligence agencies. Each and every covert program for which there is a Presidential Finding is reviewed.

Beyond these regular reports, my office inspects the Bureau of Intelligence and Research as part of our regular inspection of department bureaus. Coincidentally, an inspection of INR is now underway personally led by Deputy Inspector General Anthony Quainton. Ambassador Quainton is here with me today and to answer any specific questions you may have about that inspection.

I should like to comment in general about that inspection of INR. We have a total of 6 foreign service and civil service inspectors working on this with Ambassador Quainton. The inspection began in January and by the time we complete the job on April 1, the team will have interviewed all of INR's 370 employees. They are reviewing INR's analytical product, assessing the management of INR's resources, people and dollars, and examining INR's effectiveness as a coordinator of intelligence programs overseas.

They're looking at INR's work to judge the extent to which it has been producing timely, policy relevant analyses and is carrying out its coordination responsibilities to make sure that foreign intelligence activities are consistent with the law and U.S. foreign policy objectives.

We're also looking at the question of the security of classified information in INR and we shall make appropriate recommendations when we are completed.

I will be happy to provide this commitee with a copy of our final classified report.

I should note that as we gather information through our offices of audits, inspections and investigations, we too are deeply concerned to preserve the security of the information we gather. To be candid, this comes a little more easily to us than to most other components of the government because OIG staffs are accustomed to working daily with very sensitive material. Professionally and by inclination, we are clams. And at State, where we handle a very huge volume of classified material, we release our classified reports only to those with appropriate clearances, including here on the Hill.

We are particularly careful, of course, in all matters relating to special category and other unusually sensitive intelligence.

With regard to the broader question of security, I have directed the head of our Security and Intelligence Division in the Office of Audits to give particular attention to questions of documentary and physical security. And that shop will be looking especially at the programs of the Bureau of Diplomatic Security, beginning with the training of its special agents. As in the case of ACDA, we shall eventually be examining all aspects of the department's security programs.

An area of great concern to me and to the Secretary has been security at our Embassy in Moscow. Last October, accompanied by a senior inspector and by my Assistant Inspector Generals for Audit and Investigations, I reviewed the very complex security and logistical difficulties faced by our Missions in the Soviet Union and in Finland. On our return, I discussed our findings with the Secretary, Deputy Secretary, the appropriate bureau heads and with senior officials of the intelligence agencies. And my formal report to the Secretary makes specific recommendations for enhancing security, counterintelligence and operational control over the entire Moscow project. These recommendations are currently under review with the highest levels in the Department.

In short, Mr. Chairman, security is a very high priority for my office. As we review the management and implementation of U.S. foreign policy, we will be acutely aware of security and counterintelligence concerns. And of the absolute necessity that our government's covert programs abroad be carried on in full compliance with the law and applicable Presidential Findings. I know this is a concern of your committee, as evidenced by our being here today.

Thank you, sir.

[The prepared testimony of Mr. Funk follows:]

PREPARED STATEMENT OF SHERMAN M. FUNK, INSPECTOR GENERAL, DEPARTMENT OF STATE

Mr. Chairman, Members of the Committee:

It is a great pleasure for me to testify before your Committee on S.1818, the National Security Reform Act of 1987.

As the Committee has requested, my testimony will focus on how the statutory IG is working at the State Department and our ability to inspect intelligence programs and activities. I hope that this experience will assist the Committee in its deliberations on S.1818.

This is my first opportunity to appear before this Committee since the creation of the new Office of Inspector General. As you know, my office was created pursuant to P.L. 99-399 of August 17, 1986, and was formally established on August 27, 1986. I was sworn in as the first statutory Inspector General on August 14, 1987. Previously, I had served for six years as IG of the Department of Commerce.

As Inspector General, I operate with complete independence, reporting only to the Secretary and Deputy Secretary. I have total access to Department personnel and records. In order to ensure that my office is fully informed of all management issues, I sit as an ex officio member of the Department's Management Council and the Internal Controls Steering Committee which oversees the Department's compliance with the Federal Managers' Financial Integrity Act.

The Arms Control and Disarmament Amendments Act of 1987, signed by the President on December 24, 1987 gave me a second hat as the Inspector General of the Arms Control and Disarmament Agency. The Act also directed me to conduct a survey of physical, personnel, document and communication security programs and practices in ACDA not later than 90 days after enactment. We currently have an audit team working on this project, and I will report the results to Congress.

The new Office of Inspector General has a heavy burden of work, covering 334 foreign posts and all domestic offices of the Department of State and ACDA. One of my main jobs, in the six months since I assumed my new responsibilities, has been to recruit a highly-qualified staff to carry out our broad mandate. The office has a total of 236 authorized positions, of which 111 are either on board or selected and awaiting security clearances. Although far short of our authorized

ceiling, we are carrying out a vigorous and far-ranging program of inspections, audits and investigations. Earlier, the inspection function in State was carried out by the Office of Policy and Program Review, pursuant to Section 209 of the Foreign Service Act of 1980. To avoid costly and unnecessary duplication, the Secretary merged that office into mine last summer.

In this fiscal year, we have already inspected the large U.S. missions in the Philippines, Japan, West Germany, Spain, Portugal and El Salvador. We are currently inspecting 18 posts in Western and Southern Africa, the Caribbean, and Switzerland as well as the Bureau of Intelligence and Research and the Office of Foreign Missions. We are also carrying out a special review of the crisis management capabilities of the Department. Our audit office is actively reviewing a range of functional problems in the areas of security, overseas construction, financial management and consular fraud. Our Office of Investigations had a case load of 182 cases as of January 31, 1988. I have brought copies of our semiannual reports for the periods October 1, 1986 to March 31, 1987 and April 1, 1987 to September 30, 1987. These reports provide detailed information on the activities of the office and on the most important findings and recommendations.

Mr. Chairman, you have expressed an interest in how my office reviews intelligence programs and activities. In the course of each overseas inspection, the senior inspector, who is usually a former Ambassador, is tasked with personally assessing relations between the Chief of Mission and intelligence components of the Embassy. On his return, the senior inspector reports to me on these relationships and on any problems which he has observed. In addition, he reviews intelligence activities to determine, within the constraints of time and access, whether there are any apparent violations of law involved in intelligence programs in the country being inspected. On a quarterly basis, I report to the Chairman of the President's Intelligence Oversight Review Board on these 2nd other relevant findings which arise from our work. In addition, once each year a senior inspector reviews in depth all covert programs known to the Department. This review is carried out pursuant to Executive Order 12334 of December 4, 1981, which charges Inspectors General and General Counsels of the Intelligence Community to report to the President's Intelligence Oversight Board concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive Order or Presidential directive. Our review involves a detailed reading of INR's files and interviews with senior officers in INR, the Geographic Bureaus and the Office of the Legal Advisor. Each and every covert program for which there is a presidential finding is reviewed.

Beyond these regular reports, my office inspects the Bureau of Intelligence and Research as part of our regular inspections of Department bureaus. Coincidentally, an inspection of INR is now under way, personally led by Deputy Inspector General Anthony Quainton. Ambassador Quainton is with me today to answer any specific questions you may have about that inspection.

I should, however, like to comment in general terms on the INR inspection. A total of six Foreign Service and Civil Service inspectors are working with Ambassador Quainton. The inspection began in January and, by the time we complete the job on April first, they will have interviewed all of INR's 370 employees. They are reviewing INR's analytical product, assessing the management of INR's human and financial resources and examining INR's effectiveness as a coordinator of intelligence programs overseas. Having obtained all the appropriate clearances, the inspectors are looking at INR's work to judge the extent to which it is producing timely, policy-relevant analysis and is carrying out its coordination responsibilities to ensure that foreign intelligence activities are consistent with law and U.S. Foreign Policy objectives. The INR inspection team will also be looking at the question of the security of classified information in INR and will be making appropriate recommendations to management in this regard. I would be happy to provide to the Committee a copy of the final classified inspection report.

I should note that as we gather information through our Offices of Audits, Inspections, and Investigations, we also preserve the security of the information we gather. This comes easy to us, because OIG staffs are accustomed to working daily with very sensitive (but usually unclassified) material. Our people are professional clams. At State, where we handle a huge volume of classified material, we release our classified reports only to those with appropriate clearances -- including Capitol Hill. We are particularly careful to maintain controls in all matters relating to special category and other sensitive intelligence.

With regard to the broader question of security, I have directed the Security and Intelligence Division of the Office of Audits to give particular attention to questions of documentary and physical security. It will be looking especially at the programs of the Bureau of Diplomatic Security, beginning with the security and counterintelligence training of its special agents. As in the case of ACDA, we shall be examining all aspects of the Department's security program.

An area of great concern to me and to the Secretary has been security at our Embassy in Moscow. Last October, accompanied by the Assistant Inspectors General for Audit and

for Investigation and a senior inspector, I reviewed the very complex security and logistical problems faced by our Mission in the Soviet Union in Finland. On our return, I discussed our findings with the Secretary, Deputy Secretary, Department bureau heads, and with senior officials of the intelligence agencies. My formal report to the Secretary makes specific recommendations for enhancing security and counterintelligence. These recommendations are currently under review at the highest levels of the Department.

In short, Mr. Chairman, security is a very high priority for my office. As we review the management and implementation of U.S. foreign policy, we will be acutely aware of security and counter intelligence and of the necessity that our Government's covert programs abroad be carried on in full compliance with law and applicable presidential findings. This, I know, is a concern of your Committee as evidenced by S.1818 which we are discussing today.

I would be happy to answer any questions you may have.

Chairman BOREN. Thank you very much. I thank all three of you for your comments.

We will now follow the procedure of rounds of questions of 10 minutes each for members of the committee and then we will go on to a second rotation if we need to do that.

Let me ask, in regard to those covert actions which are undertaken under Presidential Findings, did I understand both of you to indicate that you do have the full ability to go into and to audit those activities?

Ms. BROWN. We have full access to anything going on in the department.

Chairman BOREN. Even if it includes highly compartmented confidential activities that might be being pursued under a Presidential Finding?

Ms. BROWN. Yes sir.

Chairman BOREN. Within your organization itself, is ther compartmentation? We do this even with our own committee staff. Members of the staff are compartmented and one member of the committee staff doesn't necessarily know with what another member of the staff is dealing. Is this also true within both of your offices?

Mr. FUNK. Yes sir. Strictly a need to know. And our security and intelligence shop would be the main focus of that.

Chairman BOREN. Let me go back again to Defense, with the National Security Agency and Defense Intelligence Agency, those activities including those in which there is a cooperative relationship with the Central Intelligence Agency, you have full access to all of their programs as well?

Ms. BROWN. Yes sir.

Chairman BOREN. In regard to the illegal intelligence activities, I believe Mr. Funk mentioned this, you stress and you are always alert to see if there was illegal activity, one not coordinated properly under a Finding nor conducted properly under a Finding and that this would be reported to the Intelligence Oversight Board?

Mr. FUNK. Yes sir.

Chairman BOREN. Does that requirement only run to the Intelligence Oversight Board or is there also any procedure under which these activities should be reported to the Intelligence Committees of the two respective Houses?

Mr. FUNK. I have no specific requirement to do that. Obviously, the law does require me, in the Inspector General Act, P.L. 95–452, it does require that if I encounter any serious or egregious problem, I have an obligation to report that to the Congress through the Secretary.

Chairman BOREN. Through the Secretary?

Mr. FUNK. Yes sir.

Chairman BOREN. So you would report it to the Secretary. What if the Secretary said——

Mr. FUNK. The Secretary has 7 days to comment and pass it on. But he cannot change it.

Chairman BOREN. He cannot change it?

Mr. FUNK. No sir.

Chairman BOREN. And he must pass it on?

Mr. FUNK. Yes sir.

Chairman BOREN. And if he refuses to pass it on, it would be your obligation to notify the Congress of that refusal?

Mr. FUNK. I cannot conceive that happening, but yes sir.

Chairman BOREN. Right. I can't conceive of it happening under this Secretary either.

Well, let me go back again to covert actions. If there are covert actions or if there are programs conducted pursuant to Presidential Findings that are covert activities, highly sensitive, would your reports—as you know, one of the reasons for setting up the two Intelligence Committees was to try to constrain oversight over the most sensitive programs to those committees. Obviously, there are occasions where our jurisdiction overlaps, for example, that of the Armed Services Committee. But would those reports, if there are areas—covert actions undertaken under Findings which would fall under the oversight responsibility of the Intelligence Committees, be reported broadly to other committees of Congress as well or would that be constrained only to reports through the Secretaries to this committee or to the Armed Services Committee if it were appropriate?

Ms. BROWN. We take rather extraordinary measures to keep these reports secure. The reports are typed and maintained within the activities that are being reported on. We have locked safes within that area.

And of course only somebody with the proper clearances including Members of Congress and committees, would ever have any access to that material.

Even our own people have to go over there to read reports.

Chairman BOREN. Are there guidelines as to which committees have jurisdiction over an appropriate program? I'm thinking, for example, obviously every Member of Congress is deemed to have requisite security clearances. But if I were acting in my capacity as a Member of the Agriculture Committee and I were not a Member of the Intelligence Committee, would I have the right to come in and receive the Inspector General's report even though I was not a member of the committee of jurisdiction on, let's say, some very sensitive activity issued pursuant to a Presidential Finding?

Mr. FUNK. Speaking for myself, I would certainly keep that rather rigidly limited to the Intelligence Committees, on this side of the Hill and on the other side.

Ms. BROWN. Yes sir. Same thing. And certainly the Intelligence Committee would be notified so that they would have some control and knowledge of——

Chairman BOREN. Control over distribution. Because often things are funneled to our committees and then sometimes it is appropriate for us to share it with Foreign Relations Committee or with the Armed Services Committee and other times it is not.

Mr. FUNK. If I can draw a rough analogy, sir?

We have source information that we never disclose even to the Hill. We would disclose it if it were—if it's classified, if it's not involving a sensitive matter such as intelligence, I'll be happy to show it to the Chairman of the Committee. But the source information itself is never disclosed.

Chairman BOREN. So it's the same kind of protection of sources and methods that we attempt to operate under on this committee?

For example, it's a very rare circumstance—it's very difficult for me to think of a circumstance in which I would ask for the identity of an agent by name for example, or some very highly sensitive source. So those are the same kinds of procedures that are followed.

Mr. FUNK. For example, that information, if it is in the work papers of our auditors or investigators will be rigidly segregated.

Ms. BROWN. I was going to say as well that in any public listing such as an attachment to the semi-annual report or part of it, we do not list the special access program reports. So the reports themselves, there isn't even a listing that would be available.

Chairman BOREN. Not even a composite list. It's only available again on an appropriate need to know or jurisdictional basis.

Ms. BROWN. That's right.

Chairman BOREN. Let me ask all three of you, we might begin with the Comptroller General, in looking at the qualifications of the kinds of people to be appointed Inspectors General, do you think it is a plus or a minus that they have had experience with or have been staff members of the particular agency to which they've been assigned to be Inspectors General? In other words, is it good for the person who is going to be Inspector General of the Defense Department to have been in the Defense Department network? If we were going to have an Inspector General, an independent Inspector General for the CIA, would it be good if they came from the Intelligence Community? Or would it be better if they came from the outside not having previously been a part of that particular organization? Or can't we draw any generalities about that?

Mr. BOWSHER. I would answer that they could come from either background. In other words, I think a person from outside with the proper credentials and the proper attitude can do an excellent job as an Inspector General in any agency that they had not been associated with before.

You always have the plus if somebody has background in the programs of that agency and that knowledge about the programs that work in that, that that's good. But I think the independence issue is, and the integrity and the attitude is the key to the whole thing. And I think the Inspectors General that we've had on balance have done an excellent job. Many of them have come from outside the agencies that they were appointed to.

Chairman BOREN. Let me ask just one follow-up question to you before I turn to Ms. Brown or Mr. Funk. As I mentioned in my opening remarks, in the early period, there was an argument that since Inspectors General were Presidential appointees, there would be the potential for a political coloration in the appointment process.

Have you found evidence of this as you've looked back over the last 10 years? Have there been any cases where you have issued negative reports about the work of an Inspector General or made recommendation that that person be seriously disciplined or removed?

Mr. BOWSHER. I remember that concern, Mr. Chairman, very much, when the Act was being considered. And I think it was a concern that came up again when the Reagan Administration—

when they first came into office fired all the Inspectors General. There was a great concern at that point in time.

But as we've looked at the Inspectors General and reviewed their actions over the year, we have found really no case, really, that we would say there was a political bias there that impacted on the work that was done. So it seems to me that it has been a feature of the Act that I think there was justified concern but the way it has been handled, I think it has worked well.

Chairman BOREN. Have you had any occasion to recommend either removal or serious disciplinary action against any?

Mr. BOWSHER. We have not.

Chairman BOREN. You have not.

Ms. Brown, if I could come back to you and Mr. Funk, maybe you might tell us a little bit about your own backgrounds, your own experience, and whether or not you think that the person should, in essence, come from the inside with the experience and the background in the particular agency in which they are assigned or if you think it is better to come from the outside without past association with the agencies?

Ms. BROWN. Well, I have an accounting degree. I'm a CPA. I have a MBA law degree. I was the first Inspector General of the Department of Interior in 1978. And I had worked in Interior for about 5 years prior to that.

I was the Inspector General for NASA for 4 years. Had no prior experience with NASA prior to working there. And then recently have been appointed to the Defense Department. I had worked at Defense for 4 years or so very early in my career at a much lower level. Long enough to learn the acronyms and that was helpful. But beyond that, I did not have experience in the Department of Defense.

Chairman BOREN. Would it have compromised you, do you think, if you had had experience? Or would you still be able to function independently?

Ms. BROWN. No, I do not think it would have compromised me. I think—well, I agree with Mr. Bowsher in that the person could be from inside or outside if they have the appropriate credentials and background that would complement the position and the right attitude.

Chairman BOREN. Mr. Funk?

Mr. FUNK. I was a bit of a mugwump. I am a bit of mugwump in the fact that I believe at least when I was appointed I was the only IG that did not have a direct background in auditing, law, or criminal investigation.

My background essentially was one of management. Aside from business experience, teaching experience, I spent many years in the Pentagon, part of which time I ran the Air Force cost reduction program which was not an activity which generated much love.

I've been in the Commerce Department and Energy. When I went back to Commerce as the Inspector General, I was a bit worried about the perception that I was going back to oversee a department in which I had worked for a number of years, albeit in another job. That did not turn out to be a valid fear. The perception wasn't there and I certainly don't believe I acted in that way. So I

share the feelings of Chuck Bowsher and June Brown that I think this depends upon the integrity of the individual.

There's a special problem, though, in the Intelligence Community. You have to know what to ask. That's a large part of the job in being an IG. And imposing somebody from outside the Intelligence Community I think might prove a very serious handicap.

Chairman BOREN. If we were to establish an independent Inspector General for the Central Intelligence Agency, do you think that, in this particular case, it would probably be beneficial to have someone with some background and experience in the Intelligence Community?

Mr. FUNK. Yes sir. Absolutely.

Chairman BOREN. If we were to establish an independent Inspector General for the Central Intelligence Agency, do you think that, in this particular case, it would probably be beneficial to have someone with some background and experience in the Intelligence Community?

Mr. FUNK. Yes sir. Absolutely.

Chairman BOREN. Ms. Brown, do you agree with that?

Ms. BROWN. Yes. I think that would be an absolute requirement. Not necessarily from the agency, but certainly an intelligence background.

Chairman BOREN. In the Intelligence Community in general?

Ms. BROWN. Yes sir.

Chairman BOREN. Mr. Bowsher, any——

Mr. BOWSHER. I think it would be helpful. I really do because of the point. But I don't think it is essential. I think you could also have somebody that goes in there and—in other words, you are going to have people in your department who know the Intelligence Community and I think a leader, a strong leader and a person who has a probing mind can do it.

Chairman BOREN. Thank you all very much. Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman.

Ms. Brown, I note from your statement that as Inspector General of the Department of Defense you investigate, audit the Defense Intelligence Agency, DIA. This would appear to be a very similar function to the proposed legislation on the CIA IG. What has your experience been as Inspector General of the Department of Defense with IG functions over the Defense Intelligence Agency?

Ms. BROWN. Well, we've had no problems. As I mentioned in my statement, we have special people that are designated there and observe extraordinary measures to make sure that there aren't any violations at the security requirements. But we've been able to successfully, using normal audit and investigative procedures, work in that agency.

Senator SPECTER. And the issues of dealing with classified material have not in any way impeded the Defense Intelligence Agency from carrying on its functions or from you carrying on an Inspector General's independent function?

Ms. BROWN. No sir. We have never had any problem that has arisen in that area.

Senator SPECTER. Well, you also conduct the independent Inspector General function of the National Security Agency? And I believe it would be hard to have an agency which would have more

classified information than the National Security Agency. And I would ask the same questions. Has there ever been any problem of confidentiality of the National Security Agency being respected and at the same time enabling your independent Inspector General to carry on your functions?

Ms. BROWN. There have been no problems.

Senator SPECTER. And you also conduct the IG function with respect to the Defense Nuclear Agency? Could you describe briefly what sensitive issues, if any, are involved with the Defense Nuclear Agency?

Ms. BROWN. Well I have with me Al Madison who has worked in this area exclusively for a while. Not just the Nuclear Agency but in the intelligence programs. If I may, I'd like him to answer that question.

Senator SPECTER. That would be fine. Would he please identify himself by name and position.

Chairman BOREN. I'd be happy for you to just move up to the table.

Mr. MADISON. I'm Al Madison. And I work with the DOD Inspector General's organization. I work for the Assistant Inspector General for Auditing, Program Director for General Intelligence and Special Programs and Security.

The issues at the Defense Nuclear Agency are the same that you would find at the Defense Intelligence Agency.

Senator SPECTER. Highly classified matters?

Mr. MADISON. Highly classified. One deals in foreign intelligence and at the DNA they would concentrate primarily on nuclear intelligence detection, reporting and so forth. But the issues there are essentially the same. You are protecting classified intelligence information, sources and methods.

Senator SPECTER. Mr. Funk, I note from your statement that in the State Department you also have independent Inspector General functions on intelligence programs and activities.

Mr. FUNK. Yes sir.

Senator SPECTER. That obviously involves highly classified material?

Mr. FUNK. It does indeed.

Senator SPECTER. Has there ever been any problem on your carrying out your independent function of that kind of intelligence activities?

Mr. FUNK. No sir.

Senator SPECTER. Mr. Bowsher, you have specified the benefits which you have seen come to the federal government from independent Inspectors General and you categorize one as successful prosecution of wrongdoers increased from 2,099 to 4,094 cases. Over what period of time was that increase noted?

Mr. BOWSHER. For the fiscal years 1982 through 1986.

Senator SPECTER. And you have specified that investigative recoveries rose from $45.3 million to $191.8 million dollars. Is that over that period of time?

Mr. BOWSHER. That's correct.

Senator SPECTER. And what kind of investigative recoveries in general do you refer to at page 4 of your statement?

Mr. BOWSHER. Well, they could be—see, these would cross all the departments that have the agencies. So these are recoveries that have been sought against contractors or other people there that have been challenged in that. So I think that it's a wide variety, you might say.

Senator SPECTER. And you note the sanctions against contractors or officers doing business with the federal government increased from 502 sanctions to 2,047. Is that from the same period of time, 1982 through 1986?

Mr. BOWSHER. Yes. That's correct.

Senator SPECTER. And what estimate would you have, if any, on the deterrent factor? In addition to the infractions and savings which were detected, what estimate would you have as to how many they discourage to deter?

Mr. BOWSHER. You can't quantify that, but I think that is one of the most important factors to be considered in setting up either an Inspector General or have an outside audit. And that is that if people in the agency, whether you are in the private sector or in the public sector, know that somebody's going to come along and look at something, I think there is a great deterrent there to not do something dumb, not to do something illegal. It doesn't always deter people, but I think it is a big deterrence. And I think it is an important deterrence.

Senator SPECTER. And to what extent, if at all, does the independent factor play on that important consideration?

Mr. BOWSHER. I think the independent factor is important because I think—and the permanence. In other words, I think that one of the things that is important here is that the organization understand that that function is going to be there, it's going to be well staffed over a number of years, there's going to be a number of investigations, a number of audits done. Once you have that mind set in an organization, then I think people are much more inclined to be careful as to what they are going to do and what actions they are going to take.

Senator SPECTER. Ms. Brown, returning to you, on a provision of S. 1818—this is noted and picked up specifically in Mr. Bowsher's statement, but I'd like to direct this question to you in any event—it's noted that section 4(A)(3) allows the Director of the CIA to prohibit the Inspector General from initiating, carrying out or completing any audit or investigation. But if the Director exercises this power, he must submit the reasons for doing so within 7 days to the Intelligence Committee and the Permanent Select Committee of the House of Representatives. And this provision is similar to section 8 of the Inspector General Act which allows the Secretary of Defense to prohibit certain Inspector General audits and investigations to preserve national security interest.

And my question to you is has the Department of Defense IG ever had to use this provision?

Ms. BROWN. No sir. I think the provision is a protection that we will have access to the information but we've never had the Secretary exercise that power.

Senator SPECTER. Mr. Bowsher, it seems to be a protection that really works both ways. It gives the Director or the Secretary of Defense the authority to stop the independent Inspector General

from carrying out an investigation if the Secretary chooses to justify it to the Oversight Committee. And similarly, under the proposed bill, S. 1818, the Director of the CIA can preclude the independent Inspector General from issuing subpoenas or carrying out an investigation so long as the matter is called to the attention of the Oversight Committee and the Director of the CIA, like the Secretary of Defense, is prepared to justify it.

And my question is, does that provide a good balance for independence but still controlled by the Director or Secretary with the Congressional Committee being the ultimate arbiter?

Mr. BOWSHER. Yes. I think it is an excellent balance because I think what it does is it prevents the undue expansion of people having to be involved in something that might be justified in keeping it very compartmentalized, very contained, but these are very few and far between. In other words, in general, they are not the big dollars in this. What we're talking about here is something that is very sensitive and therefore it does allow the judgment of our senior leadership both from our executive branch and in the congressional branch to make a judgment.

But everybody knows that that judgment is being made and I think that is very important. So I think it is a good balance.

Senator SPECTER. That leads to really the ultimate question of judgment and I'd like the comment of all three of you on this.

The Inspectors General have been devised to provide professional independence in each department but because of the limitations as to what congressional oversight committees can do. There's no more diligent chairman in the history of Capitol Hill than Senator Boren on the Intelligence Committee, and I don't say that just to make a point. But there are limitations as to what any committee can do. And I would like your evaluations as to the importance of the independent Inspector General to be in there on a daily basis ferreting out the information so that it is called to the attention of the appropriate congressional oversight committee in an independent way if in fact it is not caught by some other force within the department.

Mr. Funk, would you start on that?

Mr. FUNK. There is no bigger fan of IGs than myself having been one now for 7 years in two different cabinet agencies. I have seen the remarkable impact that it can have.

There is one aspect that goes back to a point that the chairman mentioned which might be troublesome in the case of the Central Intelligence Agency. The language of S. 1818 now calls upon the semi-annual reports and other reports, formal reports to be transmitted through the intelligence committees of either House. I have no difficulty with that and that's how it should be. But we also report to all Members of the Congress and there are many members of the Hill who feel perfectly free to call on us if they have a specific problem whether it ranged from a constituent complaint they feel is unanswered properly to something more substantive.

And I'm sure that Mr. Bowsher gets more than his fill of these kind of things as do all the other IGs. And the language does not preclude this from happening. Now I realize that Senate Resolution 400 says that everything should be through the intelligence committees. But that doesn't—that's not carried out in S. 1818. And

this might pose a difficulty. If some other Member of the Congress feels inclined to ask an Inspector General for information, not termed in the framework of a formal report or a semi-annual report, but just a specific inquiry, and since we are obligated by law to report fully and currently, this might pose a bit of a problem. And I would suggest that——

Senator SPECTER. Well, then, you would recommend a modification in the statutory language to cover that problem?

Mr. FUNK. If there were to be a statutory IG. Yes sir.

Senator SPECTER. And if that statutory change were to be made, do you think that problem could be easily corrected?

Mr. FUNK. With strong will power, yes sir.

Senator SPECTER. Well, you certainly have that.

Ms. Brown, I'd appreciate your comment on that underlying question as to the helpfulness of having the independent Inspector General to cover the gap that congressional oversight can't possibly cover.

Ms. BROWN. Well, I've been an Inspector General since the first group was appointed as a result of the 1978 Act, with a small gap there when I went into another job.

But I feel that the progress has been tremendous, both because of the coordination within the agency, bringing all the resources together so that one person can offer the kind of visibility that is gained by having congressional oversight and having direct reporting authority to the Secretary.

I'm a very strong supporter of the Act. I feel every agency testified against having an Inspector General prior to having one.

Senator SPECTER. You say every agency testified against having an independent Inspector General?

Ms. BROWN. Yes sir.

Senator SPECTER. Every one?

Mr. FUNK. Except one. I was informed by the Arms Control and Disarmament Agency when I made that same comment that Ms. Brown just made, I was told that they were the only agency that ever solicited an Inspector General.

Senator SPECTER. So it's eighteen to one?

Ms. BROWN. Well, there has been a great reluctance. The position, of course, has to be operating in the proper manner and with the proper attitude to be successful. But that has happened in each case and I think that the concept has proven itself. So I feel it has been very successful and could continue to be.

Senator SPECTER. Mr. Bowsher?

Mr. BOWSHER. I think it has been a successful program too. I think one of the great concerns at the beginning and it was one that I had concern about, was could the Inspector General have a positive working relationship with the head of the agency and still have a reporting relationship with the Congress?

I think that's worked out quite well really as I watch the way it is evolved. Sometimes there is a little tension, I'm sure, in the departments and in the agencies, but at the same time, I think it forces responsibility. I think it forces responsibility by the Inspector General, by the head of the agency, and by the Congress. And so I think it has worked out quite well.

I think another thing too about the Inspector General concept and legislation is it has put in a permanent function here that is working well and we didn't have that before. In other words, what we used to have is sometimes an audit function or an inspection function or an investigative function that would work well at times if it was given the adequate resources or if it was given the adequate leadership by the agency head. And when I read Judge Webster's statement here, I can see he is putting in a good program. And I have a high regard for Judge Webster.

But I think the Congress, as they consider this legislation ought to consider will it be there 10 years from now. Will it be there 5 years from now. I think that that's awfully important.

Senator SPECTER. I believe my time is up, Mr. Chairman, on this matter.

Chairman BOREN. Thank you very much, Senator Specter.

I just have one remaining question that I would like to ask and then we can have you complete any additional questions you have before we proceed to Judge Webster.

Are the people that audit these very highly compartmented sensitive programs, subject to special—I'm sure they all have the highest security clearances—are they also subject to any kind of vetting by the polygraph of any kind?

Mr. FUNK. Not if Secretary Shultz has anything to do with it. [General laughter.]

No sir, none of my staff is polygraphed. We all do have full appropriate clearances. And that is depending upon the access we need to specific information. But we're not vetted by the other agencies or by our own intelligence operation except to make sure that we do have the clearances we'll need when people come in.

Chairman BOREN. The clearances and the background checks are all conducted but no use of the polygraph is made?

What about in the Defense Department?

Ms. BROWN. The people all have the clearances. And, of course, again, it's need to know so they're read into the most sensitive programs as needed.

I have policy just speaking to my people here that is ready to come up to me now that will establish the polygraph policy and it would give them special polygraph for people in the intelligence field and it would be renewed every 5 years.

Chairman BOREN. Right now they are not polygraphed? Is that correct?

Ms. BROWN. No sir, they are not.

Chairman BOREN. And under this new proposal which I gather it's a matter of policy decision yet to be made, would that be routine polygraphing or would that be polygraphing only if they became the focus of investigation or would it be limited only to the counterintelligence questions? How broad would that be? Please don't hesitate to say if I'm going beyond what you're prepared to discuss at this point, as I understand these are just recommendations coming to you and the final decision perhaps has not been made.

Ms. BROWN. It is routine inasmuch as everybody would be subjected to it and it would be renewed on a regular basis. The final decision hasn't been made yet as to what the questions would be.

Chairman BOREN. As to whether or not they would cover every possible subject or whether or not they would be limited strictly to counterintelligence attempts at access of information?

Ms. BROWN. I could not give you an accurate answer for that.

Chairman BOREN. That's not decided yet.

Thank you very much. I might ask Mr. Bowsher, apparently there's not a common policy among departments then?

Mr. BOWSHER. We follow the policy of the agency that we are reviewing. If we are doing some highly sensitive weapon program at Defense, why we would follow their policies. If we are doing intelligence work, we get our clearances through the CIA, and we follow their procedures.

Chairman BOREN. Their policy on polygraph?

Mr. BOWSHER. And we follow that. And have in the past.

Chairman BOREN. Thank you very much.

Senator Specter, any last questions?

Senator SPECTER. Yes I have just a few more, Mr. Chairman.

One concern that I have about the current CIA procedures relates to the person holding the job of a non-independent Inspector General and then going back into the CIA ranks. And being interchangeable in that kind of a position, I have a concern as to whether that would impede a person being as stringent as he or she might were that person not to be a permanent member of the agency but in for an independent Inspector General and then move some place else.

And my question goes to you three experts as to what your view of that would be, where you have someone in the CIA who is there now, who could move from that position of dependent Inspector General back to some other position within the agency, does that provide the appropriate attitude and safeguard for the kind of vigilance and performance necessary? Mr. Funk, would you mind starting on that one?

Mr. FUNK. That's a very thorny question because the only absolute answer is unattainable and that is some kind of foreknowledge of the integrity, the guts, the will power of an individual.

You can do some of that institutionally by creating, by structuring, by organizing. But the fact of the matter is that I don't care how many protections you put to guard against somebody's independence, if they are willing to surrender it, it only becomes a de jure and not a de facto independence. So that's something which should be kept in mind, sir. And unfortunately I don't know any way of legislating an answer to that.

In terms of the fact that somebody may move back into an area after having served as an independent IG——

Senator SPECTER. Well not as an independent IG, but as an Inspector General say in the CIA today. As I understand it, the practice could be that a person would have that job and might be rotated back into the department. And the issue then arises as to whether there is a sufficient insulation to get the proper job done.

Mr. FUNK. Well possibly in a different frame of reference, but there are some similarities. One reason why the Congress created

my own job as the first statutory IG in State, was because there was a fear that a foreign service officer, no matter how well intentioned, if he knew that he may be moving under somebody else's authority that he was inspecting or reviewing at some time, might be swayed in one form or another. That is obviously a fear. And this is one reason why we have that grant of independence and that grant of statutory authority.

But I just suggest, again, sir, that all those measures in the world help to insulate but they do not ensure.

Senator SPECTER. Let me move on to another question because we do want to conclude here with this round.

You testified, Ms. Brown, that there are 1500 Inspectors—1500 people in your department and 236 in the operation at State. And I would ask you, Mr. Bowsher, what is your evaluation of the cost effectiveness of that kind of a group in terms of what they find and what they save?

Mr. BOWSHER. Well I think the statistics now after the 10 years are quite clear that the cost effectiveness has been dramatic and that is that these organizations, the Inspectors General, more than paid for themselves and that's reported to the Congress, reported to the President every 6 months. And so I think it is very cost effective and I think that's an important point because I think much of the effort of the Inspector General would be on not necessarily the highly covert operations but on some of the more costly programs of the CIA where you have big dollars being spent. And I would suspect that—in fact I wouldn't hesitate to predict that the statutory Inspector Generals office, whatever size it was created, would be very cost effective.

Senator SPECTER. Are there many inspectors general who have very large operations running into the hundreds of personnel?

Mr. BOWSHER. Well I think June's over there at Defense certainly at 1500 and we have a few that are, I think, we have a few that are understaffed as a matter of fact.

I think, in fact, June, when you were at NASA it was always our opinion and I think your opinion that the NASA Inspector General's office was not large enough to do the job.

So I think we have a mixture on whether some of them are properly staffed or not.

Senator SPECTER. I'd like to raise one other subject and then conclude. And that is there is another provision of S. 1818 which calls for a mandatory one year jail sentence for anybody who gives false information to a congressional oversight committee providing that if the person recants within 5 days that the provision is inoperative. And we have seen regrettably quite a number of instances as reported by the Iran-Contra Select Committee on information which has been given to Congress which is false.

And my question is in your experience, do you find many false answers to your inquiries and do you refer those matters for prosecution under 18 United States Code 1001 which provides for prosecution for false official—false information to a government agent?

Mr. Funk, I see you nodding—what I think is nodding in the affirmative. Would you take the first crack at that?

Mr. FUNK. Well I think that all of the Inspectors General have had a series, in some cases many indictments or convictions of vio-

lations of 1001. Yes sir. Now that comes from a wide variety of sources.

Senator SPECTER. Do you find that too, Ms. Brown, the false statements are given to you and there are many convictions that come from those kinds of investigations?

Ms. BROWN. We've had numerous such incidents. Not so much in the intelligence community area.

I think there we've had a lot of people that have been very, very reluctant, that we've had to evidence our right to have information before they felt comfortable in providing it. But I haven't noted falsehoods in that area.

As Mr. Funk said, though, that is one of the things that we frequently prosecute on.

Senator SPECTER. Mr. Bowsher?

Mr. BOWSHER. Yes. We do make some recommendations to the Justice Department. And on balance, I think it is remarkable I think most of the time we are getting very honest answers from the people that we review in the government and in the private sector. But occasionally you run into the situation.

Senator SPECTER. One of the concerns that I have that is in our closed hearings where we do not have the matters publicly disclosed, we don't have any counter check. If there's a public hearing like this one and witness gives false information, that is likely to be heard by someone who will come forward knowing that the testimony has been given and correct it. But in Intelligence Committee hearings, they are closed and material which is not truthful has every likelihood of going undetected because it is being given to Senators who have no independent knowledge.

Well, I thank you very much for your answers. I wonder, Mr. Chairman, if it might be appropriate to ask your expert witnesses to remain during Director Webster's testimony, Judge Webster's testimony, because there may be some questions that will arise?

Chairman BOREN. Certainly. That would certainly be fine if they are able to do so. And we will understand if time constraints make that difficult or if at any point in time they find it necessary to go on. But we certainly welcome their staying and being available if there might be a desire to direct some more questions to them during that period.

Senator SPECTER. Well, in your department you all have the subpoena power don't you.

Ms. BROWN. We both do.

Mr. FUNK. Say again, sir?

Senator SPECTER. You all have the subpoena power?

Mr. FUNK. Yes sir.

Mr. BOWSHER. Yes sir.

Senator SPECTER. As does this committee.

Chairman BOREN. Thank you very much. We appreciate the contribution you've made to our deliberations today. And the testimony has been excellent. It has been excellent. It has been very informative.

At this time, I think Judge Webster is available if we can notify him that we're ready to proceed with his testimony at this time. He is on his way.

[Pause.]

Chairman BOREN. Judge Webster, we appreciate your being with us today. I'm sorry; we should have sent for you a little sooner. We moved to a conclusion more rapidly than we anticipated. We'd be happy to have any of your staff join you at the table that you would like to have join you.

We have heard, as you know, from the Comptroller General. We have heard from the Inspector General of the Defense Department and the Inspector General of the State Department who've given testimony and given their views in regard to Senate Bill S. 1818, by Senator Specter, which is pending before us.

At this time we'd be happy to have your opening comments and then it will be our procedure to alternate the questions until the committee has had an opportunity to ask all the questions that they might like to propound to you.

So we would be very happy to have your views at this time both on this proposed legislation and any comments that you might like to make in regard to actions which you have taken since becoming Director.

As you recall, the Iran-Contra Committee, in its final report, drew attention to the fact that they did not feel there had been sufficient resources available to the internal Inspector General system within the agency and that some changes needed to be made. So we would welcome your comments at this time on both the current bill and any procedures or changes that you may have in progress under your direction now that you have taken over as Director.

STATEMENT OF JUDGE WILLIAM WEBSTER, DIRECTOR OF CENTRAL INTELLIGENCE

Judge WEBSTER. Thank you very much, Mr. Chairman. Senator Specter.

I'm pleased to be here today to discuss my views on Section 4 of Senate Bill S. 1818, the National Security Reform Act of 1987, which pertains to the establishment of a statutory Inspector General at the Central Intelligence Agency.

The purpose of the proposal, as I understand it, is to strengthen the independence and objectivity of the Inspector General. As Senator Specter described it, it is to help assure lawful internal compliance on matters which do not come within the purview of congressional oversight. It would add the CIA to the list of Federal agencies which currently have statutory Inspectors General.

Before I provide you with my thoughts on Senator Specter's measure, I would first like to explain briefly what the CIA Inspector General currently does and how the Office of Inspector General is now organized.

The CIA already has an Inspector General who is a senior officer reporting directly to the Director of Central Intelligence and the Deputy Director of Central Intelligence and who is subordinate only to the DCI and the DDCI. In the conduct of his duties, the Inspector General has unlimited and automatic access to all agency records.

The Inspector General currently directs and coordinates the activities of three groups—the inspection staff, the investigation staff and the audit staff. These three groups conduct special investiga-

tions when needed, routine inspections and audits. All elements of the agency, both at headquarters and in the field, are subject to examination. Only the Director of Central Intelligence has the authority to exempt a component or program from an inspection or audit. To the best of my knowledge, no DCI has ever exercised this power.

Before I explain the workings of the three groups under the direction of the Inspector General, let me emphasize that, in addition to his normal inspection, investigation and audit activities, the Inspector General now has much broader policy and management functions within the CIA. As a part of the new responsibilities that I have assigned to that office, he will be directly involved in improving overall agency management, ensuring accountability and discipline, and encouraging the raising of standards and quality of performance throughout the agency.

I see the office of Inspector General as performing another new and perhaps even more critical institutional role, and that is developing our top managers and leaders of tomorrow. Henceforth an assignment of the office of Inspector General will be a necessary and meaningful component in the career development of our brightest and most promising officers. I am personally commited to the goal of identifying and bringing our best people to the office, and I am pleased to say that we are already well on the way towards fulfilling that goal.

The inspection staff, the first of the three groups under the supervision of the Inspector General, conducts periodic investigations of all agency components to ensure compliance with laws and regulations. It also addresses problems brought to its attention and evaluates management effectiveness. In compliance with Executive Orders 12333 and 12334, the Inspector General, and for that matter the General Counsel, will report to the extent permitted by law, to the President's Intelligence Oversight Board any intelligence activities which he has reason to believe may be unlawful or contrary to Executive Order or Presidential Directive. Likewise, the Intelligence Oversight Act, Section 501 of th National Security Act of 1947, requires the agency to report to the Intelligence Committees any illegal intelligence activity along with any corrective measures taken or planned to be taken.

The investigation staff, the second of the three groups handles complaints about employee conduct and reports of possible violations of law, regulations or procedures, and also investigates employee grievances and discrimination complaints. In the past 4 years, this staff has handled an average of two dozen investigations that have culminated in formal reports, and an additional 75 informal inquiries and grievance referrals or consultations per year that do not result in formal reports.

The audit staff performs independent audits of all matters related to the receipt, disbursement, and application of funds and assets available to the agency in accordance with audit standards which the Comptroller General has established. The chief of the audit staff reports the auditors' observations and recommendations to the Deputy Director of the office concerned and and to other officials as appropirate. The Deputy Director must reply to audit recommendations within 60 days. If recommendations cannot be re-

solved satisfactorily at operating levels, they may be referred to me through the Inspector General for resolution.

Now as I stated earlier, there are no limitations on the scope of audits and investigations. The investigators, inspectors and auditors have complete access to any information within the CIA and the DCI's staff elements both at headquarters and in the field. Auditors, investigators and inspectors, as well as their supervisors, are granted special clearances when needed to review extremely sensitive compartmented activities.

Despite the many strengths of the investigation process, I discovered that some areas of the Office of Inspector General needed to be improved in the wake of the Iran-Contra affair. As you know, I brought in a special counsel, Russell Bruemmer, to review the agency's performance in the affair. In his report, Mr. Bruemmer, who now serves as the CIA's General Counsel, pinpointed the following problems in the Office of Inspector General.

The number of investigators assigned to the investigation staff were not enough to deal with the demands of a major investigation.

The investigators do not receive formalized training in investigative techniques when they rotate into this assignment.

And the investigators do not record their recollections as verbatim transcripts, signed statements, or formal memoranda for the record.

The report of the Iran-Contra committees had earlier reflected these concerns more generally by stating that the office lacked the manpower, resources, and tenacity to uncover key facts learned in other investigations of that matter.

At the same time, it is important to keep in mind that the Special Counsel noted important strengths within that office. For instance, he determined, in spite of the problems I just described, that the Inspector General's staff performed well in determining the agency's role in the Iran arms sale. In a matter of 6 weeks after the Attorney General's announcment of the sales, the investigation team produced a 40-page report on the agency's role and a 35-page chronology that have been proven to be essentially accurate after many more months of additional testimony.

Nonetheless, in light of the apparent shortcomings of the Office of Inspector General identified by the Iran-Contra committees and my special counsel, I convened a steering group last November composed of senior agency managers to recommend specific ways in which the office could be improved. Its findings mirrored to a large degree those of the Iran-Contra committees and the special counsel. That is, that the office's manpower and the qualifications of its personnel should be strengthened and its investigative staff more rigorously trained to enable it to identify areas of potential impropriety or violations of statutes and regulations better and to identify clearly and deal properly with actual violations of law.

The steering group also determined that there was room for improvement in the role of the Inspector General himself, specifically, that the authority, status and image of the position should be enlarged. Perhaps most important, the Inspector General's relationship with me should be enhanced.

I have already implemented measures that I believe will go a long way toward alleviating the problems that I have noted. Thus

far I have taken steps to ensure that the Inspector General is recognized as being equivalent in rank and position to a Deputy Director, subordinate only to me and to the Deputy Director of Central Intelligence, and have ensured that both his inspection and investigation reports are sent directly to me and to the DDCI.

I have taken steps to increase the staff of the office.

I have expanded the Inspector General's role to include becoming directly involved in improving overall agency management, ensuring accountability and discipline and encouraging the raising of standards and quality of performance within the agency, in addition to conducting his normal investigation, inspection and audit activities.

And I have appointed William Donnelly to head this enhanced Office of Inspector General. Mr. Donnelly is a widely-respected agency officer who, in 33 years with the agency, has compiled an extensive operational, management and administrative background that gives him a unique personal insight into a wide range of agency activities.

Under my tenure the process of defining the duties and responsibilities of the Inspector General will be a continuing and evolutionary process. Some other steps currently under development, but not yet fully staffed, include strengthening agency regulations pertaining to the Inspector General's responsibility; reorganizing the office to include the expansion of the investigation staff; developing training and investigative procedures; and identifying those activities which the Inspector General needs to review from time to time.

Mr. Chairman, I am concerned that enactment of a statutory Inspector General will actually prove to be counterproductive to the effective inspection and investigation process at the CIA. First, the use of the subpoena power could be counterproductive to obtaining all the facts. Administrative actions are not criminal proceedings. Voluntary cooperation is essential in learning the facts as soon as possible and implementing any necessary corrective actions as smoothly as possible.

I should also note that historically the fact that the agency has had no subpoena power is no accident. As a result of a carefully considered decision of the Congress in 1947, the agency was specifically not vested with any subpoena or law enforcement powers. It was concluded then and I respectfully submit that it is true now, that the CIA should not have any law enforcement powers or functions apart from those of our security protective officers who guard agency facilities.

Second, the subpoena power in many cases could not reasonably be used in the circumstances in which the Agency operates. Realistically, the Agency cannot go into court, risking disclosure of sources and methods, to seek a court order to have a contractor with which it has a covert relationship turn over documents. Currently the Department of Justice and the FBI seek subpoenas on the Agency's behalf. This system works well. We have found, however, that there is more than sufficient leverage in the contractual relationship itself. The bottom line is that the Agency investigations are not encumbered by the lack of subpoena power.

Third, the proposed legislation would raise some ambiguity about the statutory authority of the Director of Central Intelligence to protect intelligence sources and methods and the authority of the Inspector General to make independent decisions to release such information. Because the statutory Inspector General would have a significant amount of independence from the DCI, our intelligence sources and foreign liaison services may be reluctant to part with information that will be available to an office independent of the DCI. They are likely to believe, rightly or wrongly, that the Agency will not be able to protect their information. We have a special concern that our foreign intelligence sources may feel that the Agency will not be able to protect their identities and that the personal risk is too great to cooperate with the Agency.

Fourth, I would submit that it is simply unrealistic to expect that establishing a statutory Inspector General will by itself resolve any perceived flaws and deficiencies in that office. In this regard, it is noteworthy that in 1976 the Church Committee concluded that the Agency needed to continue to expand and strengthen its Inspector General staff, but it also pointedly refrained from recommending that the Inspector General be established by statute. The Church Committee recognized, and I believe it remains true today, that the best way to improve the performance of the Office of Inspector General is to get highly qualified and trained people to serve in the office and to make it clear to all employees that they are expected to cooperate fully with the Inspector General or risk severe consequences. I am convinced that we are now on the right track in these areas.

Finally, apart from Senator Specter's proposed legislation, I note that this committee has now formed it own audit group. The Agency is of course fully supportive of this effort and is cooperating with the committee's auditors.

The changes in the duties and perceptions of the Agency's Inspector General and his staff that I have described are significant ones. We are well down the road toward building an effective means of ensuring compliance with laws, regulations, Executive Orders and Presidential Directives. And so I ask that we be given the opportunity to demonstrate the effectiveness of these changes, rather than be forced to live with a system that fails to accommodate this Agency's unique concerns. For CIA, this is the better course to take, and I am convinced that neither I, nor the Congress, will be disappointed.

Mr. Chairman, this concludes my statement. And I am now pleased to answer any of your questions.

Chairman BOREN. Thank you very much, Judge Webster.

We've heard from the Defense Department and the State Department Inspectors General that they now have access to the most sensitive compartmented programs in, let us say the DIA and the NSA. They do this on a compartmented basis. There is participation by their departments in covert actions that are conducted pursuant to Presidential Findings.

Why is their participation any different, why would it create any additional problems for there to be an independent Inspector General at the CIA of these kinds of programs since the independent Inspector General is already looking at these kinds of programs

within the Defense Department and the State Department? What is the difference between the agencies that would cause you to come to a different conclusion?

Judge WEBSTER. Mr. Chairman, I can only report to you my understanding of the relationships that exist as they have been explained to us. And you, of course, have heard their testimony.

But the Inspector General Bill relative to the Department of Defense emphasizes fraud, waste and abuse in govenment expenditures, and permits the Secretary of Defense to have a close and direct control over any other audits of sensitive information.

It's my understanding that he has an assistant, not an Assistant Secretary, an Assistant to the Secretary who conducts and has charge of all the more sensitive investigations and does so. They do have access in an auditing sense to some of the more sensitive records, but it is my understanding they do not practice any evaluation or management responsibilities as to those issues or issues of propriety.

In terms of the State Department, I am not clear on that other than I know that the INR aspect is limited in terms of the kinds of information that is supplied to them, for instance, by our Agency.

The State Department is not an intelligence gathering organization. It does not have the kind of assets and sources and foreign liaison that we have. And I have outlined those problems to you in my opening statement.

Chairman BOREN. Is there a difference then in the volume of relationships with foreign nationals and foreign governments from the point of view of providing sources and providing information? Is there a difference, both in magnitude and in type, in terms of the contacts that might be unsettled if they knew that there were offices and independent Inspectors General that could access to that information in addition to the Director of Central Intelligence?

Judge WEBSTER. Absoutely, Mr. Chairman. And I don't think that the—my understanding that in practice the Inspectors General in State and Defense are focusing on fraud, waste and abuse in the government and not on the kinds of things with which we deal.

And I not aware that any of the committees that have investigated the Iran-Contra or other matters have found any problems with our auditing procedures which would require any kind of outside approach.

Chairman BOREN. Let me ask one more question and then I'll turn to Senator Specter. I raised this question earlier about illegal intelligence activities with the Inspectors General at State and at Defense. If they uncover evidence—potential evidence of a potentially illegal intelligence activity, it is reported to the Intelligence Oversight Board. They also look to see that the agencies have appropriate procedures to make sure that their employees and their staff members if they spot—I'm not talking about employees within the Inspector General's office but anyone in the State Department or anyone in the Defense Department if they are called upon or have knowledge of an illegal intelligence activity, that there are procedures in place to make sure that those individual employees know that they are to report it to the Intelligence Oversight Board.

We noted that, apparently, the current law does not also require a report to be made to the Intelligence Committees if there is an allegation of an improper or illegal intelligence activity. It is my understanding that the independent Inspector General has an obligation to report to Congress any illegal or improper activities. And that this report goes forward; that the Secretaries of State and Defense can merely delay for, I believe a week was the testimony, a presentation of that information to the appropriate committee.

I wonder if in the system that you've now set up, is there a similar protection that if the Inspector General of the CIA who reports obviously to the Director just as the Inspectors General report to the Secretaries in Defense and State if there is illegal action or improper activity, they are obligated then to report it to the appropriate congressional committee,

Do you envision having that kind of policy as well at the Central Intelligence Agency with your one internal Inspector General or is this still a matter that remains discretionary with the Director as to whether or not to bring those matters uncovered by the Inspector General to the attention of the Intelligence Committee if the Inspector General finds wrongdoing,

Judge WEBSTER. Mr. Chairman, I never though that I had any discretion in this matter at all. I thought it was my firm obligation as Director of Central Intelligence to keep those committees informed, and that responsibility rested with me and that you should hold me accountable for it.

Chairman BOREN. Again this is a matter upon which we're all just now focusing. Specifically would there be any objection to establishing among your procedures a time limitation of some kind in which you would if the Inspector General brought allegations or findings, not findings to you after they looked into them of improper or illegal activity, that you would report those to the committee within a certain period of time,

Judge WEBSTER. I'd be happy to work that out as part of our procedures that you would be aware of and able to call me on.

Chairman BOREN. I understand I sit here as one Senator that has not yet made any public pronouncement about how I feel about Senator Specter's proposal, and he knows that I'm struggling with this matter myself in terms of trying to be fair and to do what's best for our country, to have as much accountability as we can have, and independence as we can have, and yet be sure that we protect the important sources and methods and that we also operate in a way that will continue our ability to get cooperation from other nations. I think that's sometimes not fully understood. It's not just a matter of how does Judge Webster as Director of the CIA feel about this but how does the Director of a service in country X that provides us with a lot of important information feel. How do the political leaders in country X feel about whatever procedures we set up. Because that can be a very limiting factor in terms of what they give us.

I've been privileged since becoming chairman to talk with some of the people in other countries, both political leaders and those in the intelligence field who have very important cooperative relationships with us. And of the messages that I've tried to convey to them is that our committee is endeavoring to conduct itself in a

way that we will be very careful to safeguard any information in an appropriate way which involves their cooperation with us, so as not to embarrass them or make them hesitant to cooperate.

But I think that it might go a long way toward making sure that we have an accountability if we did have certain set procedures. Because I think it is reassuring to the appropriate committees that the independent Inspector General, if they uncover something, report not only to the head of the department, Secretary of State or Defense, but they also have an obligation to make sure that that information goes forward to the appropriate committees. In this case, they would be the two Intelligence Committees and only the two Intelligence Committees so you would not have compartmented information going to a myriad of committee as we've tried to prevent by the very creation of these two committees.

That's something I would think should be considered whatever the outcome is on this legislation.

Senator Specter, let me turn to you now for your questions.

Senator SPECTER. Thank you very much, Mr. Chairman.

Judge Webster, on the testimony immediately preceding your's which you did not hear, the Inspector General of the Department of Defense testified and put in a written statement that their independent IG function covers the Defense Intelligence Agency which would like the CIA, deal with foreign governments and foreign sources and the Department of Defense Inspector General said that that worked out just fine.

Would there be any real difference with the CIA?

Judge WEBSTER. I didn't hear the testimony, Senator Spector. And I wouldn't want to take issue with the Inspector General who certainly knows what their authorities are. But it is my clear understanding that they are severely circumscribed in access to compartmented information and that their own statute permits that. And in fact, the designation of a special officer reporting to the Secretary of Defense implements those constraints and that they do not exercise the kind of probing access to DIA's sensitive sources that that testimony might otherwise imply; that they simply do not do that.

Senator SPECTER. Well, those Inspectors General are here and they can supplement their testimony. But they have testified and the State Department Inspector General testified about his activities with respect to State Department intelligence activities and certainly the State Department deals as is there virtually exclusive business with foreign governments. And when it came to the safeguard with respect to the Department of Defense, they have a provision just as set forth in S. 1818, that the Secretary of Defense can stop the Inspector General from proceeding just as the Director of CIA can stop the Inspector General from proceeding. But in the event that conflict arose, then there would have to be a report to the Oversight Committee, the Intelligence Committee in this situation.

What Senator Boren has commented about is some procedure where it is mandated that you forward such information to the Intelligence Committees. But the problem is that you are not always going to be the Director of CIA. And where you testified that you thought you had no discretion about forwarding information to this

committee, our memories are fresh about a Director of the CIA who did not forward the information to this committee.

And I think Comptroller General Bowsher has put his finger on the essential point about institutionalizing the responsibility. Mr. Bowsher testified about the confidence which he has in you personally but asked what do we do 5 or 10 years down the road when you are not around. And in your written testimony, you really put your finger on this kind of an issue where you say at page 7, and you repeated it orally, perhaps more important the Inspector General's relationship with me should be enhanced.

But the concerns that I have, Judge Webster, go beyond the person and the personality of the Director to what we do in an institutional sense. And I would be interested in your addressing that issue. What if the next CIA Director is more like the last then the present one?

Judge WEBSTER. Senator, if you'll permit me not to use that particular frame of comparison.

Senator SPECTER. Well, you have my point. You can make any reference you like.

Judge WEBSTER. I believe that the Director of Central Intelligence has certain specific statutory obligations to the Congress. And he is mandated in this respect by law.

I do not believe that the designation of a statutory Inspector General gives you any more in real assurance that law violations are going to be detected and reported than the accountability which you have a right to expect of the Director fo Centeral Intelligence.

Senator SPECTER. A right to expect. But do we get it? A right to expect is only as good as the Director. So that comes back to my central point. What if our next Director is more like the last than the present? Or take the analogy your way.

Judge WEBSTER. Well, I think—and this is not a commentary on any of the statutory Inspectors General—but in dealing with matters of the kind of sensitivity that we have here I think it is vitally important that we have someone in place who is professionally oriented and selected with great care, as to character and personal integrity. And he is more likely to know under my system when something is going wrong than under the system where they have to go through those limitations that are described in the statute with varying degrees of familiarity with this type of thing. Great familiarity with auditing contractors and financial relationships with the public, but not as much in this area.

And I would have much more confidence that an Inspector General like Bill Donnelly back there would identify impropriety and wrongdoing and see to it that it is reported to you than I would be assured that simply giving someone a statutory designation, not selected by me, but selected through the Presidential political appointment process, would find, identify and report to you such irregularities.

Senator SPECTER. Why question the Presidential political appointment process? It brought us Director Webster.

Judge WEBSTER. I walked into that trap, but there has to be a Presidential appointment process for agency heads. In setting up the Office of Director of Central Intelligence and the Central Intel-

ligence Agency, the Congress considered this very carefully and decided to have a minimum of Presidential appointees within the Central Intelligence Agency.

There are only two Presidential appointees within the entire Central Intelligence Agency and that was done on purpose to avoid the political aspects of such a process at lower levels.

Senator SPECTER. The Congress has now reconsidered the issue. Not this committee but the Iran-Contra Select Committees. And they have gone into this issue in really great depth. Perhaps even greater depth than we will this afternoon. And they come flat out on page 425 of their 690 page report, saying the committees recommend that a system be developed so that the CIA has an independent statutory Inspector General confirmed by the Senate.

Let me put on the record now, Judge Webster, really the concerns which impelled me to introduce the bill. And they were the concerns which were particularized by the Iran-Contra Committee as its evidentiary or factual basis for coming to the conclusion which I just read.

These are the kinds of materials which they specify under the category of misleading testimony and I won't read it all because it would take too long. But here are some Clair George, CIA Director Operations, the CIA's chief of Central America Task Force, and Elliott Abrams, Assistant Secretary of State, who testified in October 1986 before the House Permanent Select Committee on Intelligence on the shooting down of the Hasenfus flight.

Abrams testified that the U.S. Government was not involved in the Hasenfus operation. George, and the chief of Central America Task Force, knew the testimony was incorrect but neither corrected Abrams. George later apologized to the Select Committee saying, "I was surprised that Abrams made that statement. It was so categorical."

Then he goes on to comment about his failure to correct it. And reading down a little bit farther, quote, "Similarly, the Chief of Central America Task Force," and his name is not here because it's classified, that's why they give the long title, "told the Select Committees that his testimony at the same time was, quote, 'Narrowly defined', close quote, "thus reinforcing the impression that U.S. officials had no role in the private resupply operations."

He then says and, it is quoted here, "I was a member of the team. I was a member of the Administration team. My frame of mind was to protect it." This is a very abbreviated summary, but it is important to really to ask you about how we can deal with it institutionally. The Iran-Contra Committee says, "A pattern developed in the CIA of not seeking information that could cause problems for Administration policy if it had to be revealed to Congress."

Now I'm skipping down a bit, "Deputy Director Gates told the Senate Intelligence Committee that agency people from the Director on down actively shunned information. We didn't want to know how the Contras were being funded. We actively discouraged people from telling us things. We did not pursue lines of questioning."

When Gates first heard Charles Allen's suspicions that a diversion of funds had taken place, his, "First reaction was to tell Mr.

Allen that I didn't want to hear any more about it." And the committee concludes this turned upside down the CIA's mission to collect all intelligence relevant to national security. Such behavior is both self destructive and corrosive of the democratic process.

Now given this recent experience, and given their voluminous report and their extensive hearings and their volumes of evidence, why shouldn't Congress now follow that recommendation and have an independent Inspector General, especially in the face of the fact that it seems to have worked in analogous circumstances with the Defense Intelligence Agency?

Judge WEBSTER. Now, Senator Specter, in Iran-Contra we had an unusual situation. And I know you don't want me to go through the chronology of the National Security Council's incursion into responsibilities that should have properly have been exercised by the Central Intelligence Agency.

There are those particular aberrations that complicate any answer by using that as an analogy. Our Inspector General prepared a number of reports which were utilized by my special counsel and by me in determining what had happened and what administrative action should be taken.

And I thought that in the main, those reports were accurate and forthright. I'm not aware in the history of statutory Inspectors General of their having developed and produced for you or for a court any similar level of impropriety. I don't think that blessing them with a Senate confirmation makes them any more able or any more responsive to their own sense of integrity than to have someone selected and given responsibility and held accountable for doing a good job.

Senator SPECTER. Judge Webster, haven't you already concluded that the CIA Inspector General's report on Iran-Contra was inadequate?

Judge WEBSTER. I concluded as best I can from the records available to me that those portions of the report that dealt with the sale of arms to Iran and all that led up to that aspect of the investigation was quite good and that there were significant pitfalls in the investigation of the Contra side.

But I find nothing in those pitfalls that cannot be attributed to professional shortcomings and practices that have already been corrected. And nothing that I can see would indicate that would have been alleviated by the appointment of a statutory Inspector General.

Senator SPECTER. Well, Judge Webster, I think the Iran-Contra Select Committees really go to the issue of independence. It isn't a matter solely of professionalism. And if you have an independent stalwart director like Judge Webster, then you don't need independence.

But if you have Directors who do not have that kind of dedication, consider the disclosure non-discretionary, then you have those kinds of problems.

Judge WEBSTER. Well, Senator Specter, if I may respond to that? I appreciate the compliment, but I think it is very important that my Inspector General have the kind of independence that requires him to take appropriate action if for some reason I should step in between him and his clear duty.

Senator SPECTER. But he doesn't have that. He doesn't have that authority now.

Judge WEBSTER. He has the obligation to make his reports to me. And in large measure, I think that's the appropriate place for inspections, inquiries and audits to go. I have the obligation to report any improprieties or illegalities to the Congress as well as to the Intelligence Oversight Board.

Senator SPECTER. But what about disagreement between your successor and the Inspector General?

Why not leave it up to the Intelligence Committee to hear the matter and decide whether the Inspector General ought to proceed?

This bill allows your successor to stop the independent Inspector General from investigating. But it requires that if that is done within 7 days the Intelligence Committee has to hear about it, so that there is oversight by the Congress in the event of disagreement between your successor and your Inspector General. Why not?

Judge WEBSTER. My reading of the bill is that it invites a good deal more intrusion by Members of the Committee and others in the Congress into the working affairs of the Agency through the Inspector General other than the obligation to report infractions and improprieties.

Senator SPECTER. Where do you see that, Judge Webster? I don't think the bill does that.

Judge WEBSTER. Well I—that's my reading and my concern of it. Does he work for me or does he work for you? And it talks about, to keep the Congress fully informed by means of reports required by subsection 8 and otherwise. I don't know what "otherwise" means other than being on call.

And I really think that cuts into my obligation and my prerogative to report to you and to be accountable to you for what's going on in the Agency.

Senator SPECTER. Well suppose that provision were deleted and he had the authority to conduct investigations which you disagreed with but not to report them absent your agreement but in the event of what clash, then to have the committee the final arbiter?

Judge WEBSTER. Well that course is an improvement over that particular language, but it still leaves the——

Senator SPECTER. I don't think there's any intention, Judge Webster, to have him over our employee. We simply want him to have independence so that if there is a conflict between your successor and him, that committee will hear about it.

That's all we want.

Judge WEBSTER. We have kind of a chicken and an egg problem. Because you want to be sure that he has independence. I want to be sure that his first obligation is to make me aware of problems, and give me an opportunity to correct them to consult with him and to report to the Congress, both on his recommendations and what I think should be done about it.

Senator SPECTER. I agree with that. I agree that he ought to come to you first. And that it ought to be your call. But if he sees it differently than you do or if he sees it differently than your successor, than that's the juncture where it seems to me that this committee

ought to know about it. Because this committee doesn't have the time to do his work.

So it's at that critical juncture, and perhaps we can accommodate your concerns and accommodate our concerns.

Judge WEBSTER. Well, of course, I want to accommodate your concerns, and I've outlined mine in my statement, not the least of which is our relationship with foreign services who have expressed concern about these particular disseminations of information.

I guess we just have a different view of statutory Inspectors General in sensitive and unique places like the Central Intelligence Agency. You're going to extract from my successor the same kinds of commitments that I gave to you, I'm sure, before you confirm him.

Senator SPECTER. I'm sure we'll get the commitments, but will we get the compliance?

Judge WEBSTER. Well, I'm not sure that a statutory Inspector General is going to find non-compliance. I think someone like Bill Donnelly, selected by me for his competence and experience, is far more likely to find that. And in the environment in which we work today, it would be a very, very errant Director of Central Intelligence who would not realize that there's very little he could do that you would not ultimately know.

Senator SPECTER. Yes. But that's the key point, Judge Webster. Ultimately may be a long time, like 14 months on the sale of arms to Iran.

Judge WEBSTER. Well, the inspector process doesn't mean that the Inspector General is spending his full time investigating the Director of Central Intelligence, I hope.

Senator SPECTER. Of course not.

Judge WEBSTER. And these are done on routine procedures or where something evolves which suggests wrongdoing and the Inspector General on his own or under specific instructions then follows through to find out what happened.

But he doesn't need to wait for me and has not been waiting for me in conducting inspections. I've tasked him in some cases, and he's been following up immediately in others.

Senator SPECTER. Well, there's a difference and the Inspectors General who testified, the Comptroller General testified about the issue of independence.

And I do believe that when you talk about your central concern, I'm going to have our staffs work and I'm prepared to modify the bill so that the Inspector General, the independent Inspector General doesn't come to the committee before he comes to the Director. Make it perfectly plain.

And we're not asking him to be a tattletale. We're asking him to have the stature and the independence to do the investigation. And then to come to you. But in the event that you or your successor disagrees with him, to have the latitude to come to the committee.

And I believe in that kind of a context. Especially as demonstrated by the Intelligence Committee in the past year plus. We have maintained the confidentiality and I think it satisfies the concerns that you voice about the foreign sources for information.

Judge WEBSTER. There's one aspect to the problem that I hesitate to address, but I just might as well put it on the table. And that is

the importance I place in a purely professional organization such as the Central Intelligence Agency which does not make policy and has no political connections or involvement, the importance I place on the Director of that organization as being able to select his own Inspector General.

I have indicated the enhanced role that he will play with me as I did in the FBI in involving the whole training process, the role that I believe he can play in unifying the Central Intelligence Agency with its four diverse directorates and other offices.

And I do not have an assurance that by allowing that appointment to flow through the political process, I will end up with the kind of Inspector General that I believe that I need to have in a purely non-political, non-policymaking organization.

And if I cannot have that kind of person, then that person cannot do the enhanced work that I've outlined for you.

Senator SPECTER. Judge Webster, I believe that as a practical matter, in your circumstances, were this bill to be passed, you would have that kind of a choice. And the Presidential selection process is the best one we have with Senate confirmation. And I think that by and large that process has done a reasonably good job. The best job available of keeping inappropriate political considerations out of the system.

But I think it all boils down to the testimony of the other Inspectors General that of the 19 Inspectors General appointed, 18 Directors, Secretaries objected to it.

And they've all worked out very well in practice. And given the kind of a Director who doesn't need an Inspector General, it is fine not to have one but institutionally, it has proved regrettably to be necessary and at least so far as this Senator is concerned and the Iran-Contra Select Committees, the record and the evidence dictates that we have that kind of an independent Inspector General.

Judge WEBSTER. I think we are not far apart on the need for an Inspector General. I really believe that I need one badly. And I depend on him enormously.

But I depend upon him because I believe that we are a team and that he is going to be able to do the additional things that I want him to do and will be responsive to me. And I simply say that I think you have the accountability of the Director of Central Intelligence rather than having to rely on getting sidebar testimony.

I know that the argument has not been uniformly accepted in other departments about the cocooning of Inspectors General, but in most of the other departments, they are dealing almost entirely with expenditures of money outside the agency or by those who have responsibility for letting contracts. Whereas we are dealing on a day-to-day basis with such sensitive information, that if I found myself with an Inspector General, statutory Inspector General from outside the career service, I would have very serious doubts about the quality of cooperation that he could and would receive from within. Much as I would carry out my responsibilities to urge full cooperation with him.

Senator SPECTER. Well, I thank you, Judge Webster. I think we've come quite a long way in closing the gap. And I think we ought to work together to see if we can't close it all the way.

We are very close and the area that separates us perhaps can be bridged by the experience of the other Inspectors General with the Defense Intelligence Agency being sufficiently analogous to allay the remaining concerns which you have. And I think we ought to make that effort. And I for one am prepared to try to do so.

Judge WEBSTER. I appreciate that very much, Senator Specter. And you know I will always try to cooperate with you.

I would simply like, once again, to reiterate my plea that you give the procedures I've put in place a chance to work. And if they don't, I'll have very little to argue about.

Senator SPECTER. Thank you very much, Judge Webster. Thank you, Mr. Chairman.

Chairman BOREN. Thank you, Senator Specter.

I, in listening to this discussion, think there may be some points in which there may be some common ground that can be found. One of the things that I would like to think about is whether or not the Inspector General, let us say, if we decided to stay with the system and with the experiment that you are undertaking, if that were the case, we still might want to put some statutory language in place, or might even want to codify to some degree this system that you are putting in place.

I suppose I still find myself, after hearing this discussion today, somewhere between the position of those who are just totally opposed to making any statutory change and yet not convinced that I would want to go as far as Senator Specter does in terms of what this proposal would be.

There may very well be a way that we could codify because I am concerned. You come to this position with very unusual background, having been a Judge, having been a part of the legal process. I don't think there's anyone that doubts your commitment to the rule of law. You have demonstrated that with some of the disciplinary actions that have been taken. And I think that the committee certainly has confidence that you're following that line.

I have confidence also that the vast majority of the professionals in the agency believe in just the same policy. I don't think this is something that came with William Webster. I think there are many professionals in that agency who cheer when they see the rule of law being followed and enforced and who never want to be put in a position themselves in their own professional lives.

This is one of the sad things that I saw as a Member of the Iran-Contra Committee. Often times there were people who were good professional people who were put under unbearable political pressures. It is easy for us to sit back after the fact and say, well, they should have resisted. They were put in very difficult situations having political pressures exerted upon them by individuals that they thought had great political influence. They were put in the position as professionals of either, in essence, giving up their careers in some cases, or of taking actions with which they really were not in agreement and had a lot of professional misgiving about.

So I think there's much that can be said. I certainly view it as one of the duties of this committee not only to provide oversight over the Agency, but in a sense to be a buffer for the Agency to protect them against undue political pressure so that these kinds of

things don't happen to the good professionals that we have over there.

But I do think Senator Specter raises a good point that some of the changes that are being made might end up being temporary; for instance, if in the future we had a different kind of Director with a totally different viewpoint, one that might be more willing to allow political pressures to be brought to bear or one who might even participate in allowing or exerting political pressures himself.

So I think that's something we might think about. To see if there is any way that we could codify some of these changes, I think, just like my suggestion for working out some procedures. It would have to be with due regard for the sensitivities of other countries, for making sure that the Inspector General's report, after it comes to you if there's a finding of wrongdoing, would come in some appropriate way to the Committees within a certain period of time.

These are the kinds of things that we might look at to and I know there's always an inherent sensitivity in the Executive branch of government to codifying things. I've had these discussions with those in the White House about if you put certain things in your Executive Orders, why are you hesitant to have them codified. If you are at one hundred percent in agreement on policy, why not codify these things to make sure that your successor is bound by them.

And I understand, having been a Governor, a lot of times your perspective changes. What I used to regard as interference with rightful executive prerogative, I now understand is appropriate legislative oversight, as I sit in the legislative body. So your perspective tends to change depending upon which side of the table you happen to be sitting. [General laughter.]

But I do think we share a common concern that certain fundamentals of policy, that are simply sound procedure, that will in effect be protective of the professionals in the Agency and their professional independence, should be put in place in a way that they could not be reversed.

I heard the President recently talk about irreversible withdrawal from Afghanistan in a manner in which it couldn't be turned around. And some of us would like to see irreversible actions toward democratization in Nicaragua, for example, before we will accept that real progress has been made.

So, these hearings have given us something to think about. Again, Senator Specter, I commend you for your contribution to this discussion and the legislative proposal that has brought us together because I think, however we end up on all points on it, it has focused our attention on a very important problem.

Judge Webster, you have helped also to focus our attention through the changes that you have made in the system within the Agency already since you've become Director. I am bound to believe that, whatever the final legislative product is, that good will come of our airing of this matter and putting our best thoughts together.

Let me say again to our witnesses that were here earlier, the sharing of your own personal experiences, has been very helpful to us. Noting reactions to some of the questions and answers that have been given, I think there may even be some areas of agree-

ment to things that have been said during this hearing. So we would welcome your additional thoughts too.

After you testified, now you've heard Judge Webster and you've heard our questions back and forth, we would welcome any thoughts that you have because this is a unique committee. It's not an area where we sort of go to the mat and try to put together political steamrollers to pass out legislation with a preconceived idea of what the result ought to be. It really is an area of importance to national security. The members of the committee sincerely want to come to the decision that it will be balanced and right and address the problems that we are dealing with.

So in that spirit we will take this matter under advisement. I know Senator Specter is anxious and I am anxious in good faith to have a markup session of our committee as soon as we can on this lelgislation.

Between now and that time, I think we have a lot of good thoughts to mull around and some ways in which we might look at some variations and modifications to see where we might go.

So I thank everyone for contributing. Senator Specter, any last comments that you'd like to make?

Senator SPECTER. No.

Chairman BOREN. This is history making in the Senate for any Senator not to seize the opportunity to make additional comments. But I thank everyone for being involved and the hearing will stand in recess.

[Thereupon, at 4:53 o'clock p.m., the hearing was recessed.]

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